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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1946

No. 10, Original

THE UNITED STATES OF AMERICA,
COMPLAINANT,

vs.

THE STATE OF WYOMING AND THE OHIO OIL COMPANY, DEFENDANTS

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 10, Original

THE UNITED STATES OF AMERICA,
COMPLAINANT,

vs.

THE STATE OF WYOMING AND THE OHIO OIL COMPANY, DEFENDANTS

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[fol. 1] [File endorsement omitted]

[fol. 2]

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 10, Original

UNITED STATES OF AMERICA, Plaintiff,

v.

STATE OF WYOMING and THE OHIO OIL COMPANY, Defendants

MOTION FOR LEAVE TO FILE COMPLAINT—Filed August 8, 1944

The United States of America, by its Attorney General and its Solicitor General, asks leave of the Court to file its complaint against the State of Wyoming and The Ohio Oil Company submitted herewith.

Francis Biddle, Attorney General; Charles Fahy, Solicitor General.

August 1944.

[fol. 3] STATEMENT IN SUPPORT OF MOTION

This is an action by the United States against the State of Wyoming and The Ohio Oil Company proposed to be instituted in this Court under authority of Article III, Section 2, Clause 2, of the Constitution of the United States. The purpose of the proposed action is to establish the Government's title to lands comprising a section 36 in Wyoming and to recover the value of gas, oil, and other petroleum products taken from that section. Wyoming claims that under Section 4 of the Act of July 10, 1890, c. 664, 26 Stat. 222, admitting it to the Union, it was granted sections 16 and 36 of public lands in each township for the support of common schools. The other defendant, The Ohio Oil Company, claims under leases from the State. The Government contends that prior to the acceptance of the survey of the section 36 in controversy the lands were withdrawn by order of the President and included in Petroleum Reserve No. 41 and therefore were not public lands within the grant of 1890

to the State. The original jurisdiction of this Court is invoked since both the United States and the State of Wyoming claim title to the same land and full and complete relief is possible only in this Court.

A survey to identify the sections within the township in which section 36 lies was authorized in 1914, the survey was [fol. 4] made in 1915, and was accepted by the Commissioner of the General Land Office on July 27, 1916. On December 5, 1915, about seven months before the survey was accepted, the President under authority of the Act of June 25, 1910, c. 421, 36 Stat. 847, withdrew from location, settlement, sale, or entry all of section 36 for classification and in aid of legislation and placed the section along with other lands in Petroleum Reserve No. 41.

While section 36 was not surveyed until 1916, the township in which it lies was surveyed prior to that date. The north line of the township is a part of the Montana-Wyoming state line surveyed in 1880. The east, south, and west boundaries of the township were run in 1892 and the survey was accepted by the Commissioner of the General Land Office on December 20, 1892.

The State, it is believed, may contend that title to section 36 passed to it upon acceptance of the 1892 survey of the township and therefore section 36 was not "public land" available for withdrawal by the President under authority of the Act of June 25, 1910. The grant of school lands made by the 1890 Act admitting the State expressly exempted "all mineral lands" from its operation and authorized lieu selections (Section 13 of the Act of July 10, 1890). If as a matter of law the township survey satisfied the requirements of the 1890 grant as to identity of the sections within the township the question will arise as to whether section 36 [fol. 5] was known to be mineral land in 1892 when the township survey was completed and accepted. In that event the Government will contend that in 1892 the land was known to be mineral and therefore did not pass to the State.

In addition, the State may claim that title to section 36 passed to it by reason of the Act of January 25, 1927, c. 57, 44 Stat. 1026, as amended by the Act of May 2, 1932, c. 151, 47 Stat. 140, 43 U. S. C., sec. 870, extending the school land grant to include mineral lands not "included within the limits of existing reservations of or by the United States * * *." The Government's position is that since section

36 is a part of Petroleum Reserve No. 41 it did not fall within the purview of the 1927 Act.

Francis Biddle, Attorney General; Charles Fahy, Solicitor General.

August 1944.

[fol. 6] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 10, Original

UNITED STATES OF AMERICA, Plaintiff,

v.

STATE OF WYOMING and THE OHIO OIL COMPANY, Defendants

COMPLAINT—Filed October 9, 1944

The United States of America, by its Attorney General and its Solicitor General, brings this suit in equity against the defendants, the State of Wyoming and The Ohio Oil Company, and for its cause of action states:

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States.

II

The Ohio Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal office and place of business at Findlay, Ohio.

[fol. 7]

III

At all times herein material the plaintiff was and now is the owner in fee simple of public lands in Park County, Wyoming, described as Section 36, Township 58 North of Range 100 West of the Sixth Principal Meridian.

IV

The State of Wyoming claims some right, title or interest in said land adverse to the United States.

V

The defendant, The Ohio Oil Company, claims some right, title, or interest in said section 36 under an oil and gas lease or leases granted to it by the State of Wyoming, and now is and for many years last past has been in the actual possession of said section 36 actively engaged in the production of gas, oil, and other petroleum products therefrom. The exact amount and value of gas, oil, and other petroleum products extracted by the defendant, The Ohio Oil Company, is not known to the plaintiff, but it is informed and believes, and upon such information and belief alleges, that the value of the oil and other products extracted by the defendant, The Ohio Oil Company, is in excess of $165,000.00.

[fol. 8]

VI

Defendants, State of Wyoming and The Ohio Oil Company, have no right, title, or interest in or to said section 36 or any part thereof, but title in fee simple to said section and each subdivision thereof remains in the United States.

VII

The claims and action of the defendants have caused and will continue to cause irreparable injury to the plaintiff, for which there is no adequate remedy at law.

Wherefore, plaintiff prays:

1. That a decree be entered quieting title in the United States to said section 36, declaring that the United States is the owner and entitled to the possession of said land; adjudging that the defendants have no right, title or interest in or to said land or any part thereof; and perpetually enjoining the defendants and each of them from asserting any right, title or interest in or to said land or any part thereof, or from interfering with the possession of the United States in said land.

2. That a decree be entered requiring the defendants to account for all gas, oil, and other petroleum products extracted from said land by the defendants or either of them.

3. That a decree be entered adjudging that the plaintiff recover from the defendants the full value of all gas, oil,

[fol. 9] and other petroleum products extracted from said land by the defendants or either of them, with interest thereon.

4. For such other and further relief as this Court may deem proper and necessary.

Francis Biddle, Attorney General; Charles Fahy, Solicitor General.

August 1944.

[fol. 10] [File endorsement omitted]

[fol. 11] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

Number 10, Original

UNITED STATES OF AMERICA, Plaintiff,

vs.

STATE OF WYOMING and THE OHIO OIL COMPANY, Defendants

ANSWER OF DEFENDANTS—Filed January 24, 1945

Come now defendants, State of Wyoming and The Ohio Oil Company, its lessee, and for their joint and several answer to the complaint herein, admit, deny, and allege:

1. Admit Paragraph I of the complaint.

2. Admit Paragraph II of the complaint.

3. Deny Paragraph III of the complaint.

4. Admit Paragraph IV of the complaint; and in this regard, allege that the defendant State of Wyoming is now, and for a long time hitherto has been, the owner in fee simple, and in the possession of and entitled to the possession, of the lands described in the complaint, to-wit: Section 36, Township 58 North of Range 100 West of the Sixth Principal Meridian.

5. Admit Paragraph V of the complaint; but in this regard, defendants allege that the State of Wyoming and [fol. 12] its lessee, The Ohio Oil Company, have at all times, in good faith, understood and believed, and still

understand and believe, that the State of Wyoming is now, and for many years has been, the owner of said Section 36 and that the leases granted by the State of Wyoming to defendant The Ohio Oil Company were given and granted by the State of Wyoming and accepted and taken by defendant The Ohio Oil Company under and with such good faith, understanding and belief, and any and all exploration and development work done by the defendant The Ohio Oil Company in or upon said lands was done under said good faith, understanding and belief, and any oil or gas produced by the defendant The Ohio Oil Company from said lands was produced under said good faith, understanding and belief; that if the Court should find, adjudge and decree that the United States is now and always has been the owner of said Section 36, then and in that event the defendants allege that on any accounting in respect to the value of the production of said oil or gas, credit should be given to the defendants for any and all proper expenditures made by defendant The Ohio Oil Company in the exploration and development of said lands for oil and gas purposes, and for all proper expenditures and costs of operation incurred in the production of said oil and gas; that the defendants further allege in this regard that the costs incurred by defendant The Ohio Oil Company in said exploration, development and producing operations has exceeded the value of any oil or gas produced from said lands.

[fol. 13] 6. Deny Paragraph VI of the complaint; and in this regard, defendants allege that the defendant State of Wyoming is now, and for a long time hitherto has been, the owner in fee simple, and in the possession of and entitled to the possession, of the lands described in the complaint and hereinbefore described, and that plaintiff has no right, title, or interest in and to said lands or any part thereof.

7. Deny Paragraph VII of the complaint.

For a First, Separate and Distri-ct Defense, Defendants Allege:

1. That under and by virtue of the terms and provisions of the Organic Act, approved July 25, 1868, which created the Territory of Wyoming, Sections 16 and 36 of each township of the lands embraced within the territorial boundaries of said Territory of Wyoming were reserved for the pur-

pose of being applied to public schools in the state or states thereafter erected or created out of said territory.

2. That under and by virtue of the terms and provisions of the Act admitting the State of Wyoming to the Union, approved July 10, 1890, said Sections 16 and 36 of each township of the lands embraced within the boundaries of said State of Wyoming were granted by the United States of America to the defendant State of Wyoming for the support of its common schools.

[fol. 14] 3. That on or about the 3rd day of March, 1892, the Commissioner of the General Land Office, through the United States Surveyor General for the State of Wyoming, informed the State of Wyoming that upon its formal application therefor, a survey of Townships 57 and 58 North, Ranges 97 to 102, inclusive, West of the Sixth Principal Meridian, would be made by the United States for the purpose of identifying the sections numbered 16 and 36 that were located within the said area.

4. That on or about the 7th day of March, 1892, the State of Wyoming made and filed with the Surveyor General for the State of Wyoming a formal request for a survey by the United States of the townships above mentioned for the purpose of identifying the sections 16 and 36 that were located or included in said townships.

5. That the request of the State of Wyoming for a survey of said townships for the purpose aforesaid was submitted to the Commissioner of the General Land Office on or about the 11th day of April, 1892, and thereafter, and on or about the 28th day of April, 1892, a contract between the United States and one, Augustus L. Coleman, covering the making by said Coleman of a survey of said townships, was approved by the Commissioner of the General Land Office, and in special instructions which formed a part of said contract, the said Coleman was informed that said survey was being made at the request of the State of Wyoming for the purpose of identifying the Section- 16 and 36 that were situated within the lands embraced in said con- [fol. 15] tract and to be surveyed by said Coleman pursuant to the terms and provisions of said contract and the special instructions attached thereto and made a part thereof.

6. That on or about the 5th day of August, 1892, the Surveyor General for the State of Wyoming advised the Commissioner of the General Land Office that Coleman had completed the surveys covered by the above mentioned contract and that the same were ready for examination in the field; that thereafter, and on or about the 11th day of August, 1892, the Commissioner of the General Land Office instructed the United States Surveyor General for the State of Wyoming to make a personal inspection of said surveys in the field, and pursuant to said instructions, said Surveyor General made such inspection and prepared field notes thereof; that on or about the 26th day of November, 1892, the plats, transcripts, and field notes made and prepared by said Coleman in connection with his said surveys, and the transcripts and field notes made and prepared by said Surveyor General in connection with his examination in the field of the said Coleman surveys were filed in the office of the said Commissioner of the General Land Office and submitted to him for his approval.

7. That on or about the 20th day of December, 1892, the Commissioner of the General Land Office, being fully advised, and acting within his authority, accepted and approved the said Coleman surveys.

8. That in respect to said Township 58 North, Range 100 [fol. 16] West of the Sixth Principal Meridian, the said Coleman did not subdivide said township, and did not survey and run the interior lines of Section 36 of said township, or mark the interior northwest corner of said Section 36, and the plats, transcripts, and field notes prepared by him and filed in the office of the Commissioner of the General Land Office, as aforesaid, so disclosed; that said Coleman did survey the exterior lines of said township, and did survey the exterior lines of said Section 36, and said Coleman did mark the three exterior corners of said Section 36, and his plats, transcripts, and field notes filed with the Commissioner of the General Land Office, as aforesaid, so disclosed, and said survey of the exterior lines of said township and of said Section 36, with said marking of said exterior corners of said Section 36, together w-th the surveys of adjoining townships made by said Coleman under said contract, were sufficient to identify said Section 36.

9. That the United States now, and for the first time to the knowledge of defendants or either of them, contends

that title to said Section 36 did not pass from the United States to the State of Wyoming upon the approval and acceptance of said Coleman surveys by the Commissioner of the General Land Office on the ground that Township 58 was not subdivided by said survey thereof and that the interior lines of Section 36 were not surveyed and run and that the interior northwest corner of said Section 36 was not marked.

10. That the plats, transcripts, and field notes covering [fol. 17] the Coleman surveys that were filed in the office of the Commissioner of the General Land Office and submitted to him, as aforesaid, were sufficient to identify said Section 36, and the said Commissioner of the General Land Office had authority so to determine, and when said Commissioner of the General Land Office accepted and approved said Coleman surveys made for the purpose aforesaid, he determined, within his authority, that said Coleman surveys sufficiently identified said Section 36.

11. That if the Commissioner of the General Land Office had objected to the Coleman survey of said Township 58 and of said Section 36 thereof on the ground that the interior lines of said Section 36 had not been surveyed and that the said Township 58 had not been subdivided or that the northwest corner of said Section 36 had not been marked, then and in that event the State of Wyoming would have requested, and would have obtained, a more detailed survey of said Township 58 and said Section 36 thereof, and such further, more detailed survey would, in any event, have been made and approved long prior to 1900, and the title to said Section 36, free from any objection thereto by reason of any alleged insufficiency of the survey, would have vested in the State of Wyoming; that the State of Wyoming, knowing that said survey was made at its request and for the express purpose of identifying any sections 16 and 36 located within the area covered by said surveys and well knowing that the said Coleman surveys did identify said Section 36, was lulled into a sense *a* security by the approval of said surveys by the Commissioner of the Gen- [fol. 18] eral Land Office, and said State of Wyoming, relying upon the approval of said surveys by the Commissioner of the General Land Office as being sufficient to pass the title to said Section 36 from the United States to the State of Wyoming, did not inquire into the situation from the

standpoint of the objections to said surveys now made by the United States, and did not request or insist upon a more detailed survey of said Township 58 and said Section 36 thereof; that by reason of the foregoing facts and circumstances, the plaintiff is now estopped in equity from asserting that the approval and acceptance by the Commissioner of the General Land Office of the said Coleman surveys did not pass title to said Section 36 from the United States to the State of Wyoming because of any alleged insufficiency or defect in said Coleman surveys.

[fol. 19] Counterclaim

The Defendants for their joint and several counterclaim against the plaintiff, United States, allege:

1. That the defendant State of Wyoming, subject to certain oil and gas leases executed by it in favor of the defendant The Ohio Oil Company, is now, and for a long time hitherto has been the owner in fee simple, and in possession of and entiled to the possession of that certain piece or parcel of land situated in Park County, Wyoming, and particularly described as Section 36, Township 58 North of Range 100 West of the Sixth Principal Meridian.

2. That the plaintiff United States of America claims some right, title, or interest in said land, adverse to the State of Wyoming.

3. That the plaintiff United States has no right, title, claim, or interest in or to said Section 36, or any part thereof, but title in fee simple to said section and each subdivision thereof, with the right of possession thereof, is in the State of Wyoming, subject to said oil and gas leases in favor of said The Ohio Oil Company.

Wherefore, defendants pray a decree of this Court:

(1) That the complaint of the plaintiff be dismissed and that the defendants be allowed their costs and disbursements incurred herein.

[fol. 20] (2) That a decree be entered quieting title in the State of Wyoming to said Section 36, declaring that the State of Wyoming is the owner, and entitled to the possession of said land; adjudging that the United States has no right, title, claim, or interest in or to said land or any part

thereof; and perpetually enjoining the United States from asserting any right, title, claim, or interest in or to said land or any part thereof, or from interfering with the possession thereof by the State of Wyoming and its said lessee, The Ohio Oil Company.

(3) For such other and further relief as this Court may deem proper and necessary.

Louis J. O'Marr, Attorney General of the State of Wyoming, Capitol Building, Cheyenne, Wyoming. C. R. Ellery, 405 Majestic Building, Cheyenne, Wyoming, Attorneys for the Defendant, State of Wyoming. A. M. Gee, Hal W. Stewart, Attorneys for the Defendant, The Ohio Oil Company, Findlay, Ohio.

[fol. 21] [File endorsement omitted]

[fol. 22] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 10, Original

UNITED STATES OF AMERICA, Plaintiff,

v.

STATE OF WYOMING and THE OHIO OIL COMPANY, Defendants

REPLY—Filed March 6, 1945

The United States for its reply to the answer of the defendants denies each and every affirmative allegation contained in the answer save as those allegations constitute an admission of matter alleged in the complaint and except as hereinafter admitted, qualified or otherwise alleged:

I

Admits the allegations of Paragraph No. 1 of the First Separate Defense but plaintiff alleges that said Organic Act did not operate to vest the State of Wyoming with title to any sections 16 and 36.

II

Admits the allegations of Paragraph No. 2 of the First [fol. 23] Separate Defense except that plaintiff alleges that

said Act of July 10, 1890 did not operate to vest the State of Wyoming with title to any sections 16 and 36 which were then unsurveyed or known to be mineral in character.

III

As to Paragraph No. 3 of the First Separate Defense the plaintiff is without knowledge or information sufficient to form a belief and therefore denies the same.

IV

As to Paragraph No. 4 of the First Separate Defense plaintiff alleges that by letter dated March 7, 1892 the State Board of Control of Wyoming requested the United States Surveyor General for Wyoming to cause to be surveyed and subdivided a number of townships including Township 58 North of Range 100 West of the Sixth Principal Meridian.

V

As to Paragraph No. 5 of the First Separate Defense plaintiff alleges that on March 8, 1892 the United States Surveyor General for Wyoming entered into a contract with Augustus L. Coleman covering, among other things, the making of a suryey of said township 58; that included as a part of that contract were instructions dated March [fol. 24] 11, 1892 from the United States Surveyor General for Wyoming informing Coleman, among other things, that the survey had been requested by the State Board of Control of the State of Wyoming; that by letter dated April 11, 1892 the United States Surveyor General for Wyoming submitted to the Commissioner of the General Land Office said contract and that on April 28, 1892 the contract was indorsed as approved, by the Commissioner of the General Land Office.

VI

As to Paragraph No. 6 of the First Separate Defense plaintiff admits that on or about August 5, 1892 the United States Surveyor General for Wyoming advised the Commissioner of the General Land Office that Coleman had completed the surveys under the contract and that the surveys were ready for examination in the field; plaintiff further admits that on August 11, 1892 the Commissioner of the General Land Office authorized the United States Sur-

veyor General for Wyoming to make a personal inspection of the surveys made under the contract. Plaintiff alleges that the United States Surveyor General for Wyoming made an inspection but that in conformance with the practice and instructions of the General Land Office said inspection was simply a spot-check and not an inspection of every line of the surveys and that the inspection did not extend to [fol. 25] any line of said township 58; that by letter dated November 26, 1892 the United States Surveyor General for Wyoming forwarded to the Commissioner of the General Land Office, among other things, a diagram showing the exterior lines of a number of townships including said township 58 and transcripts of field notes of surveys executed by Coleman under his contract and the transcript of the Surveyor General's field notes of his inspection of the surveys made by Coleman.

VII

As to Paragraph No. 7 of the First Separate Defense plaintiff alleges that by letter dated December 20, 1892 the Commissioner of the General Land Office accepted the Coleman surveys.

VIII

As to Paragraph No. 8 of the First Separate Defense plaintiff admits that Coleman did not subdivide said township 58 but did survey the exterior lines of said township 58 and did mark the three exterior corners of section 36 in said township 58. Plaintiff alleges that Coleman did not make a survey which subdivided said township 58 into sections and did not survey any of the lines of section 36 or of any other section in said township.

For further reply to the answer of the defendants plaintiff alleges:

[fol. 26] I

That all but the SW¼ of the SW¼ of section 36 of said township 58 was known to be mineral in character prior to December 20, 1892 when the survey of the exterior lines of said township 58 was accepted and therefore only the SW¼ of the SW¼ of section 36 of said township could have been covered by the Act of July 10, 1890 admitting Wyoming into the Union.

II

That a survey of section 36 of said township 58 was authorized on July 14, 1914 and was accepted by the Commissioner of the General Land Office on July 27, 1916 and that the Coleman survey of the exterior lines of said township 58 did not constitute a survey of the section 36 in said township.

III

That on December 6, 1915 about seven months before the survey of section 36 in said township 58 was accepted, the President, under authority of the Act of June 25, 1910, c. 421, 36 Stat. 847, withdrew from location, settlement, sale, or entry all of section 36 in said township for classification and in aid of legislation and placed the section along with other lands in Petroleum Reserve No. 41.

[fol. 27] Reply to Counterclaim

First Defense

Alleges that the Court is without jurisdiction to hear and determine the counterclaim, since the United States has not consented to be sued.

Second Defense

I

Denies the allegations of Paragraph No. 1 of the counterclaim.

II

Admits the allegations of Paragraph No. 2 of the counterclaim.

III

Denies the allegations of Paragraph No. 3 of the counterclaim.

Wherefore, the plaintiff prays judgment as demanded in its complaint and prays that the counterclaim be dismissed.

Francis Biddle, Attorney Geenral; Charles Fahy, Solicitor General.

March 1945.

[fol. 27a] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1944

No. 10, Original

THE UNITED STATES OF AMERICA, Complainant,

vs.

THE STATE OF WYOMING and THE OHIO OIL COMPANY

ORDER APPOINTING SPECIAL MASTER—April 25, 1945

It Is Ordered that Nat U. Brown, Esquire, of Yakima, Washington, be, and he is hereby, appointed Special Master in this cause, with authority to summon witnesses, issue subpoenas, and to take such evidence as may be introduced and such as he may deem it necessary to call for. The Master is directed to find the facts specially and state separately his conclusions of law thereon (cf. Rule 52 of the Rules of Civil Procedure for the District Courts of the United States, first sentence), and to submit the same to this Court with all convenient speed, together with a draft of the decree recommended by him. The findings, conclusions, and recommended decree of the Master shall be subject to consideration, revision, or approval by the Court. The Master shall be allowed his actual expenses and a reasonable compensation for his services to be fixed hereafter by the Court. The allowances to him, the compensation paid to his stenographic and clerical assistants, and the cost of printing his report shall be charged against and be borne by the parties in such proportion as the Court hereafter may direct. If the appointment herein made of a Master is not accepted, or if the place becomes vacant during the recess of the Court, the Chief Justice shall have authority to make a new designation which shall have the same effect as if originally made by the Court herein.

[fols. 28-34] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1944

No. 10, Original

UNITED STATES OF AMERICA, Plaintiff,

vs.

THE STATE OF WYOMING and THE OHIO OIL COMPANY,
Defendants

Transcript of Proceedings Before Special Master

Pursuant to notice duly given to all parties in interest, the above-entitled cause came on regularly for hearing at Cheyenne, Wyoming, at the hour of 10 o'clock in the forenoon of the 10th day of September, 1945, with the Honorable Nat. U. Brown, Special Master, presiding;

Appearances for the respective parties being as indicated herein;

Whereupon the following proceedings were had:

[fol. 35] The Master: Gentlemen, if you are ready to proceed, will you please read into the record the appearances on behalf of the plaintiff?

Mr. Sonosky: On behalf of the United States, Marvin J. Sonosky and Walter H. Williams, attorneys, Department of Justice, Washington, D. C.

The Master: And the State of Wyoming?

Mr. O'Marr: Louis J. O'Marr, Attorney General, and C. R. Ellery, Special Counsel for the State.

The Master: And The Ohio Oil Company?

Mr. Everett: For The Ohio Oil Company, A. M. Gee; Harold H. Healy; Hal W. Stewart; W. H. Everett.

COLLOQUY

The Master: I might say that I believe that I am familiar with the issues, so it is not necessary for counsel for the Government to make a preliminary statement unless they desire to do so.

Mr. Sonosky: If Your Honor please, the Government has come here this morning prepared for a pre-trial conference. We had not anticipated that the case would commence today. We had in mind at all times that so much of the accounting as could be agreed upon would be put

into the record, and that the accounting matter was to be taken up at the pre-trial conference, and so much of it as could be agreed upon eliminated.

The Master: Apparently, the attorneys for the State [fol. 36] of Wyoming had a different idea on that. As I understand it, you have been unable to agree on an accounting. Is that correct?

Mr. Ellery: Yes.

Mr. Sonosky: We have been unable to agree on all parts of accounting, but our thought was that in a pre-trial conference it could be worked out under Your Honor's guidance, and I still think it can be. If we can proceed following the procedure under the Federal Rules of Civil Procedure, Rule 16, and hold a pre-trial conference, and each side submit its position on each of the issues in controversy with respect to the accounting, I believe a great deal of time could be saved, because at some date a hearing will have to be held on that accounting.

Mr. Everett: In that connection, in connection with the accounting, we had been hopeful of arriving at some sort of a stipulation, but, if Your Honor please, now, since Government counsel is here, they are raising the question of good faith of the State of Wyoming and of The Ohio Oil Company in this connection; for the first time that has been raised, in the last two or three days, of the entire accounting, and it winds around that proposition, that together with some other reasons, and we just are not ready on that phase of the case; and, as Mr. Ellery has stated to the Master this morning, the accounting is purely a side [fol. 37] issue anyhow and may not even be in the case at all.

The Master: Do I understand your witnesses are not available?

Mr. Sonosky: Today.

The Master: When will they be available?

Mr. Sonosky: Tomorrow. And we would like to take an exception with respect to the statement made by counsel as to the good faith. There is no secret about that. The Government's position simply is that it is entitled to the value of the oil produced from that section, and that the defendant The Ohio Oil Company is a willful trespasser.

The Master: That will be a part of your case in chief?

Mr. Sonosky. The amount and value of the production is a part of the Government's case in chief.

The Master: There is very little, if any, controversy on that?

Mr. Sonosky: There is none. We are willing to accept the figures submitted to us in informal discussion by The Ohio Oil Company. The request for admissions is simply a formal request asking them to furnish us with the same figures that they previously furnished.

The Master: I don't know what your order of proof will be, necessarily. I will say, so far as the Government's case is concerned, when they reach the accounting, then every phase of the accounting can go in, in the case in [fol. 38] chief. I understand there is no controversy over that.

Mr. Everett: Well, there certainly is a controversy, may it please the Master, with reference to the Government's theory.

The Master: Yes.

Mr. Everett: The theory of willful trespasser has been raised for the first time just in the last few days, by the service of this demand on us for admissions, we say, in which they have picked out only a part of the account which was previously submitted to them, and which was checked against our books by one of their auditors, and they raised the proposition of good faith and claim, that as to the expenditures, and so forth (if I understand the Government's position correctly), that neither The Ohio Oil Company nor the State is entitled to any credit with reference to that matter which, as we view it, makes an entirely new and separate issue and an issue that is not in the case at this time.

Statement of Position of State of Wyoming

Mr. Ellery: May I state the position of the State of Wyoming, for the record, on this matter at this time? It has been the understanding of the attorneys for the State that this case presents on the merits a question as to the title as between the United States and the State of Wyoming, to the school section, 36, involved here. The petition prays, first and separately, for a decree quieting the title of the United States. It then prays, separately and

distinctly, for a decree that an accounting be had, and then, [fol. 39] a third and separate prayer, which in substance is that they have judgment for any amount shown to be due them on that accounting.

Now, when the matter was first suggested to the attorneys for the State that a stipulation might be worked out in advance covering any accounting phase that might develop, after there was a decision there to have available in any event, whether the attorneys for the State were well founded in assuming that the United States did not intend to charge bad faith against the State from the beginning of this matter, which goes back to 1916, I don't know. In any event, when we learned that the United States did intend, on any accounting phase in this case, as a preface to that accounting, to charge bad faith and compel the State of Wyoming to prove good faith, then we decided that the only way we could do would be to follow the logical and well-established rules of law in regard to cases of this class, and that is that there is no issue before the Master at this time on an accounting, and that there can be no issue except by consent of the parties in trying to save time, and that sort of thing, until after a decision on the merits as to title has been reached. And I would not say that the petition did not probably raise an issue as to good faith when the accounting is reached, but until the accounting has been reached and the case has arrived at a point [fol. 40] before Your Honor when Your Honor can say, as a matter of law, that there is an issue of accounting before you, unless the parties agree on some plan, I don't think that any evidence is admissible on that issue yet; that if it comes to a proposition at this time in advance, and we feel it is out of order for taking any great mass testimony on that point, we would like to have the matter stated and have an application made for instructions from the Supreme Court.

STATEMENT WITH RESPECT TO ACCOUNTING ISSUE

Mr. Sonosky: Your Honor, perhaps I should make a statement with respect to that accounting issue. In its complaint, in addition to requesting a decree quieting title in the United States, and in addition to requesting an accounting for oil and gas, the Government prays that a decree be entered adjudging that the plaintiff recover from

the defendants the full value of all gas, oil, and other petroleum products extracted from said land by the defendants, or either of them, with interest thereon. That prayer of the Government is in the complaint, and there should be no surprise to counsel here about it today.

Now, as a part of the Government's case in chief, it is necessary for the Government to show the amount and value of production extracted from that land. We did not invoke the discovery processes of the Court because, under the circumstances, considering the United States and the State were parties and that we were in the Supreme Court, [fol. 41] we felt the parties together would work out the necessary figures. The Ohio Oil Company, at the Government's instance, voluntarily permitted the Government auditor to examine the statement previously prepared by The Ohio Oil Company's accountants and to check that statement with the original books and records of the company, as to the amount and value of production extracted by the defendant Ohio Oil Company from Section 36, and the Government is satisfied to accept the figures furnished by The Ohio Oil Company voluntarily.

As to the amount of expenditures made by The Ohio Oil Company in the operations of Section 36, we are in substantial agreement as to the amount of capital expenditures made by the company, including the cost of drilling five oil wells, three water wells, and the lease equipment; we are in agreement with the figures of The Ohio Oil Company as to the amount of money they expended for operating Section 36 from the beginning of production through December 31, 1944, the period checked; we are in agreement with the figures of The Ohio Oil Company as to the amount of taxes they paid on production and personal property in connection with their operations in Section 36. The only other item is Overhead. The Ohio Oil Company claims a sum of about $22,000 representing a charge of overhead in connection with their operations on Section 36, and on that item the Government and The Ohio Oil Company have not been able to agree.

[fol. 42] Now, it seems to me almost absurd to require a long, drawn-out accounting on issues on which there is no controversy. We have an opportunity to cut this accounting question right straight down to the single item of Overhead.

Now, if The Ohio Oil Company does not care to have the Government accept their figures as to those items other

than overhead, on which we are not in agreement, then the Government is concerned only with the amount and value of production.

Now, as a matter of record and in order to protect itself strictly as a matter of precaution, and as I see now a precaution well exercised, the Government served both the State of Wyoming and The Ohio Oil Company with requests for admissions. The originals of those requests were forwarded to you. In those requests we asked that the returns be made today, allowing, as we thought, the longest time possible. So there was no question here of The Ohio Oil Company being compelled to run to its books and examine its records. The request is simply for a copy of the figures voluntarily furnished by The Ohio Oil Company to the United States.

So I should like Your Honor to make a ruling with respect to the response of The Ohio Oil Company to that request; that the request is a proper one, and we haven't the information as to the value and amount of production the Government can put in in its case in chief.

[fol. 43] Mr. Ellery: May I be clear on a certain proposition? May I ask if it is a part of the Government's main case on the merits that the good faith on any phase of the accounting is involved? In other words, he says that it is a part of the Government's main case to show the value of the oil extracted from that land. Well, now, that issue does not and cannot come up until there has been a ruling that the United States owns that land and owns that oil.

The Master: Well, I will say this: That I perhaps am at some fault in suggesting to you all that you try, if possible, to determine these figures. In a case of this kind the first issue which must be decided is the ownership of this land. Upon the decision on that matter rests the question of whether there is any accounting at all. In other words, I expect the Government will proceed to show by its evidence that it owns the land, and then it is my opinion that they have made a case on that; then we go into the accounting feature both as to the proceeds from the oil taken out of the land and the amount of offset, if any, that they are entitled to. My idea, however, is that in a case of this kind, where there is a reference from the Supreme Court, that we are all interested in having it go to the Court with the complete record, and my plan was to find all the facts upon which issue has been joined, whether I deem decision on those facts

necessary to my decision in the case or not. And that is [fol. 44] why I suggested the possibility that you could agree upon the figures, not that it was thought that that was necessary in your case in chief or that it even might prove material in the case, I wanted to find all those facts whether I deemed them material or not, and tender to the Court my ruling irrespective of the decision as to the ownership of the land.

Now, it seems to me that there is no reason for any cross purposes here or for counsel to take arbitrary positions, and if you have really agreed as to everything except to the amount of overhead chargeable against this operation, when we come to that feature of the case I think we can get together on that very quickly, and if they want to offer *to offer* evidence as to the proportionate share of the overhead that they charged, I shall be very glad to hear the evidence on it. But I am going to rule right now that, at this stage of the case, on the contentions on the part of the State, that you are anticipating something that may not be material, and so we will go ahead with the general issue as to the ownership of this land.

Mr. Sonosky: May I say, Your Honor, that the Government will not be able to rest its case in chief——

The Master: It can rest its case on the question as to the ownership of the section, could it not?

Mr. Sonosky: Do I understand, then, that the hearing is to be continued; that there will be two hearings, one dealing [fol. 45] with ownership, and one dealing with accounting?

The Master: The question of ownership will be gone into first, yes. The hearing will be all one hearing. When a decision is reached on that, then we will proceed with the acounting. Now, gentlemen, I want it understood that, irrespective of my view as to the ownership of this land, unless the Supreme Court of the United States tells me not to, I am going ahead with the accounting feature and find on that, as well.

Mr. Sonosky: Is that all going to be done at this hearing?

The Master: At this hearing.

Mr. Sonosky: I wonder if Your Honor will advise me whether he is going to make a ruling on our request for admissions.

The Master: At this time I am going to overrule your request.

Mr. Sonosky: An exception, please.

The Master: It may be understood now that all counsel will have an exception to every adverse ruling that I make, so it won't be necessary to read them into the record.

Mr. Ellery: May I be clear on that ruling, Your Honor? Do I understand that ruling to be that at this time and during this hearing, before Your Honor has indicated any decision on the merits of the case, evidence will be taken [fol. 46] as to the good faith of Wyoming, and that sort of thing?

The Master: No.

Mr. Ellery: I wanted to make it clear. As I understood Your Honor's remarks, you have in mind the same thing that we have, and that is that, regardless of what your decision may be, when it is announced on the merits, you will then proceed to dispose of any accounting issue involved, whether it is technically raised by your decision on the merits or not; you want all of it in; and that you will then take that, so that you can prepare a complete record to the Supreme Court, and they will have before them the evidence on the accounting, or the stipulation, so that if they agree with Your Honor, or reverse Your Honor, nevertheless, they could dispose of the entire case.

Now, I think that would be the practice that the Supreme Court has indicated shall be followed, and we have no objection to it, and we are hopeful that when the decision on the ownership is announced, we will then be able quite readily to agree on practically all accounting figures, and we may have an opportunity, by that time or shortly thereafter, to agree on good faith down to certain periods, and that sort of thing, so that when the accounting came before you it would be pretty well buttoned up by stipulation and agreement and that there will probably be very little evidence. [fol. 47] The Master: At this point I want you all to understand this: that I may not even make a ruling as to the ownership or proceed with the accounting feature. In other words, it may be that before I decide that, I want additional law and briefs on the subject. So that I want you prepared to go ahead.

Mr. Ellery: The only thing I wanted to understand clearly was at this time, during your present trip, we would not have to go into good faith.

The Master: I want to clean it all up on this trip, to take the evidence on the accounting, and I see no reason why you gentlemen cannot get together on that.

Mr. Ellery: Well, we cannot get together on the good faith.

The Master: No, not on the question of good faith.

Mr. Ellery: And we are not prepared to offer evidence on good faith at this time.

Mr. Sonosky: There is no reason why counsel should not be prepared. It is in the complaint. The rule of damages——

The Master: It is a question of the application of proper rule of damages one way or the other, whether it occurred during that period. Mr. Ellery, it is my view at this point, more or less thinking out loud, that apparently there has been good faith and you were to get these figures and agree [fol: 48] upon them, and something has arisen where that has broken down; but I desire counsel to try to avoid that if possible, and be able to submit these figures at this time, rather than to go into a long accounting; and I see no reason why, if that is going to be the case, we shouldn't have a complete record at this hearing, because where the only question seems to be the question of overhead charged to operations, it does not seem to me necessary to come back at some other time.

Mr. Ellery: That is the only thing that we cannot, I think, probably reach, and we have thought we had reached an agreement on the figures. It was new to us. I might have been wrong in assuming that this good faith issue would not be involved, that it would be agreed that the State of Wyoming acted in good faith in assuming that it was the owner of Section 36. Now, the Government will not stipulate that that is right, and we have spent a week in going over a mass of correspondence pursuant to that issue, and we still haven't properly analyzed it, and it would take a week, not less than a week, to introduce the evidence on good faith.

Now, I frankly do not feel that we should be compelled to do that at this time, and I would like the record to show that we are not prepared to do it, either, and it may be that we should have done, but I have felt, and I still feel, that trying this accounting case out of order, to the extent

[fol. 49] of taking any mass of testimony, is not by any authority or procedure.

The Master: Well, I don't want to rule upon the question of any continuance of the matter at this time.

Mr. Sonosky: Is Your Honor ready to proceed?

The Master: Yes.

Mr. Sonosky: There are a few preliminary matters that the Government will take up now, with Your Honor's permission.

The Master: Yes.

Mr. Sonosky: At this time the Government moves to amend its complaint—moves to amend Paragraph 5 of the complaint, Page 6, by inserting after the word "of," on Line 6 of Paragraph 5, the words, "the East One-Half of the Northeast Quarter of," so that the line will read, "Possession of the East One-half of the Northeast Quarter of said Section 36, actively engaged in," and so forth.

Mr. Ellery: We haven't any objection, Your Honor, if Your Honor has any authority. We understand the rule to be that the Master has no authority to amend pleadings.

Mr. Sonosky: Just a moment, if counsel please, until I finish.

Mr. Ellery: Very well.

Mr. Sonosky: The Government also moves to amend Paragraph No. 1 on Page 5 of its Reply by striking the words in the first line of that paragraph as follows: "But [fol. 50] the Southwest Quarter of the Southwest Quarter," and by placing the period after the word "accepted," on Line 5 of the same paragraph, and striking all of the paragraph after the word "accepted," on Line 5, reading as follows, "And therefore only the Southwest Quarter of the Southwest Quarter of Section 36 of said township could have been covered by the Act of July 10, 1890, admitting Wyoming into the Union." That the portion just read should be stricken. It is moved to be stricken from Paragraph 1, Page 5, of the Reply.

The Government further moves to amend the second defense stated in the reply to counter-claim on Page 6 of the Reply, by striking the period after the word "counter-claim," in Paragraph No. 1 of the second defense, and inserting the following words: "and alleges the defendant The Ohio Oil Company is in unlawful possession of the East Half of the Northeast Quarter of said Section 36."

Your Honor, the Government appreciates the power to amend the pleadings lies within the Court, but it is felt that request for amendment should be contained in the record in order that the pleadings may accurately reflect the Government's case. The proposed amendments do not in any way affect the general issues.

The Master: This case is committed to the Special Master on the issues joined in the pleadings as filed, and the Special Master has no right or authority, over objections of counsel, to permit any amendment. Does counsel for defendants [fol. 51] object to the amendment?

Mr. Everett: The Ohio Oil Company joins in the statement of Mr. Ellery.

Mr. Ellery: We would like the record to show that we have no objection to the statement being considered as an application in the Supreme Court for leave to amend there instanter, as far as that is concerned.

The Master: That is the way it will be treated. Has the Government anything else to offer at this time?

Mr. Sonosky: Well, Your Honor, on the theory that we were going to have a pre-trial conference, we have worked out in longhand, without the benefit of stenographic assistance, a series of what we thought were the issues in the case. Now, I don't know whether Your Honor desires to go into that or not.

The Master: I think that would be helpful, yes.

Mr. Sonosky: We would be glad to read into the record what we consider the issues in the case and perhaps have the reporter reproduce them for us. We have been handicapped here.

The Master: Yes, I would like to hear them.

STATEMENT PROPOSED BY GOVERNMENT AS REPRESENTING THE ISSUES

Mr. Sonosky: The Government proposes the following as representing the issues in this case:

1. Whether, under the act of July 10, 1890, admitting Wyoming into the Union, title to a school section 36 vested in Wyoming prior to the date of acceptance of the official [fol. 52] survey subdividing into sections the township within which the school section 36 would lay.

2. Whether the land described as Section 36 in this case was officially surveyed by the survey of the exterior bounds

of Township 58 North of Range 100 West of the Sixth Principal Meridian, which survey was accepted by the Commissioner of the General Land Office on December 20, 1892.

3. Whether the survey accepted July 27, 1916, subdividing Township 58 North of Range 100 West of the Sixth Principal Meridian into sections constituted the only official survey of the Section 36 in Township 58.

4. Whether the title to the land in controversy in this case vested in the State of Wyoming prior to December 6, 1915, the date the land was withdrawn as a part of Petroleum Reserve No. 41 or whether, on December 6, 1915, the land was a part of the Federal public domain and the property of the United States and was therefore subject to withdrawal.

5. Whether on December 20, 1892, the date the survey of the exterior lines of Township 58 North, Range 100 West of the Sixth Principal Meridian was accepted by the Commissioner of the General Land Office, the land was known to be mineral in character and therefore excepted from the Act of July 10, 1890, admitting Wyoming into the Union.

The Master: Will you state that again? When will you show, or attempt to show, that it was known to be mineral, [fol. 53] or mineral in character?

Mr. Sonosky: At what stage of our case?

The Master: No, what date?

Mr. Sonosky: December 20th, 1892.

6. Whether the United States is estopped from denying that the survey of the exterior lines of the township accepted by the Commissioner of the General Land Office on December 20, 1892, constituted a survey of the land described as Section 36 within the township.

7. Whether the United States is entitled to recover from the State of Wyoming and The Ohio Oil Company the amount of royalties paid by The Ohio Oil Company to the State on production from the land in controversy and received from The Ohio Oil Company by the State.

8. Whether the United States is entitled to recover all income from Section 36 received from that section by the State.

9. Whether the United States is entitled to recover from the State the personal property and production taxes paid

by The Ohio Oil Company to the authorized officer of Park County, the county in which the land in controversy is situated, which taxes were assessed and levied on property on Section 36 and on oil produced from Section 36.

10. Whether The Ohio Oil Company was a willful trespasser for the entire period in controversy or for any portion of that period.

[fol. 54] 11. Whether The Ohio Oil Company is lawfully entitled to deduct from the gross earnings of the company derived from the land in controversy:

(a) Any moneys expended by the company in connection with its activities on Section 36;

(b) The cost of constructing three oil wells, Nos. 1, 2 and 3, brought in as producing wells;

(c) The cost of constructing three water wells;

(d) The cost of constructing two oil wells, Nos. 4 and 5, which were dry holes and non-productive;

(e) The cost of lease equipment;

(f) Operating expenditures of the company representing the cost of extracting the oil;

(g) All money paid as taxes on property on the land in controversy assessed and levied upon as personal property and the money paid as taxes on the production from Section 36, and such moneys being paid to Park County, Wyoming;

(h) Any sums representing the general and administrative expense of the company charged as overhead to Section 36.

Those, we thought, covered all of the issues as we saw them in the case.

Now, with Your Honor's permission, if you will grant the Government a ten-minute recess, I believe we may be able to put on some evidence in our case in chief.

The Master: Before I do that, I would like to inquire [fol. 55] from you as to just what evidence you propose to offer in your case in chief as to the ownership of the land, without reference to the accounting end of the case at all. In other words, I want to hear, just briefly, of course, what

you propose to offer which you believe will entitle you to the decree asked in Paragraph 1 of your prayer.

Mr. Sonosky: Just one instrument, Your Honor—the order of withdrawal of December 6, 1915, withdrawing this land and withdrawing Section 36, and embracing it as a part of the Petroleum Reserve No. 41.

The Master: Yes, I will be glad to give you a recess. Does counsel for the defendants have anything?

Mr. Ellery: Is Your Honor interested in a statement of the theory of the defendants?

The Master: After I give the Government a recess I will hear from you.

Mr. Ellery: All right.

The Master: We will be in recess for ten minutes.

(Whereupon, a short recess was taken.)

STATE'S CONCEPTIONS OF THE ISSUES

Mr. Ellery: The United States having outlined their [fol. 56] conceptions of the issues, Your Honor, we think it might be helpful if the State outlined its conceptions of the issues only on the merits as to the title issue.

Under the statement of the Government's conception of the issues, it appears that the Government conceives the title as relating only to the question of when, if at all, title vested. No indication is given as to whether they conceive that this is a technical legal title or whether it might involve equitable title.

I would like to make clear that the conception of the State as to the issues of title is this, first, and as a distinct and separate claim, that the Organic Act of Wyoming contained a reservation which provided that Section 16 and 36 of every township should be reserved to the incipient state for school purposes; that under the legislative history of that Organic Act it appears that Section 14 of the bill as introduced provided that Sections 16 and 36 of every township "after survey preparatory to bringing the lands on the market are hereby reserved." An amendment was offered to that section striking out the words "after survey preparatory to bringing the lands on the market." This Organic Act was adopted with the reservation section as it appears today, namely, a reservation of Sections 16 and 36, without any comment of "after survey preparatory to bringing the lands on the market."

[fol. 57] Following that, the Enabling Act was enacted, and the Enabling Act of Wyoming is in strict accordance with the intention of Congress in making the reservations, namely, that it does not merely grant Sections 16 and 36 of every township, unless sold or otherwise disposed of, but specifically provides that said lands shall not be subject to pre-emption, homestead entry, or any other type of entry under the laws of the United States, whether surveyed or unsurveyed.

Now, Wyoming takes the position that under the Organic Act reservation and under the terms of the school grant of Wyoming's Enabling Act, there was segregated and set apart from the public lands of the United States, un-surveyed, Sections 16 and 36, and that it does not make any difference whether or not there was a basis of technical legal title in Section 36 under the Enabling Act grant, if the grant of the Wyoming Enabling Act was sufficient to constitute a withdrawal or a segregation of those school sections so that they were not thereafter subject to disposition on the part of the United States. That makes Wyoming's title good, that is, when there is an approved survey. Now, that is the first theory.

Then, we have a second and distinct theory, which, again, does not limit itself in toto to a question of legal title, and that is, that on December 20th, 1892, a survey of the exterior [fol. 58] lines of Township 58 was approved, and that that survey, so approved, established the three exterior corners of Section 36, and that survey was sufficient to identify or make susceptible of identification the whole of Section 36, so that we again have the theory that if, under the Enabling Act and the reservation of the Organic Act, there was not a segregation and a setting apart of these lands so as to thereafter make them not subject to disposition on the part of the United States in the approved survey of the exterior lines, which established the three exterior corners, Section 36 then became either so exactly identified or made susceptible to identification that, in any event, then, Section 36 was withdrawn from the public lands of the United States and thereafter was not subject to disposition on the part of the United States.

There is also, coupled with the title based on the approved survey of the exterior lines of the township a contention further that we will make in the brief that legal title passed, as a matter of fact. I want to make it clear that

our contentions are not confined to a proposition that legal title vested in Wyoming, but are mostly confined to the proposition that the approved survey of the township exterior lines was sufficient to withdraw Section 36 from the public lands and to require that the United States thereafter hold said land subject to the grant of the Enabling Act.

[fol. 59] There is another point that I noticed, that they conceive the issue as to the known mineral character of the land to be confined to December 20th, 1892, which is the date that the survey of the exterior lines of the township was approved. Of course, it is Wyoming's theory that the interest of Wyoming was established under the Enabling Act as of July 10th, 1890, and if the land was not then known to be mineral in character that the interest and claim of Wyoming then became fixed.

Mr. Everett: As alleged by the Government, The Ohio Oil Company is the lessee of the State, and, it being our landlord, our contentions as to these matters are the same as expressed by Mr. Ellery.

The Master: Is the Government ready to proceed?

OFFERS IN EVIDENCE

Mr. Sonosky: Yes, the Government is ready, Your Honor. I will ask to have these documents marked for identification.

(Whereupon, five documents were marked for identification as Plaintiff's Exhibits 1, 2, 3, 4, and 5.)

Mr. Sonosky: At this time, the Government offers in evidence Plaintiff's Exhibit No. 1, so marked for identification, including three documents marked as 1-A, 1-B, and 1-C, which constitute the following: 1-A is a letter dated November 23rd, 1915, from the Director of the United States Geological Survey to the Commissioner of the General Land Office, transmitting a proposed Petroleum With-[fol. 60] drawal No. 41; 1-B is a letter dated November 23rd, 1915, from the Director of the United States Geological Survey addressed to the Secretary of the Interior, and endorsed as referred to the President on December 3rd, 1915, recommending for submission to the President a proposed order establishing Petroleum Reserve No. 41, Wyoming No. 16; and 1-C, a document entitled "Order of

Withdrawal, Petroleum Reserve No. 41, Wyoming No. 16," signed on December 6, 1915, by Woodrow Wilson, President, and withdrawing from settlement, location, sale or entry, and reserved for classification and in aid of legislation the lands described in the instrument, including Township 58 North, Range 100 West, unsurveyed, and Section 36, all in that township.

The Master: Is there any objection?

Mr. Ellery: The State has no objection to the introduction of this instrument and its various portions, if offered for the purpose of proving that the order was made for the withdrawal of Section 36 together with other lands, and that, following that order of withdrawal, Section 36 was included with other lands in a withdrawal.

We do have an objection to the instrument, or any part of it, being considered or accepted for the purpose of evidence that Section 36 was unsurveyed at that time. Section 36 is grouped with other lands as being unsurveyed, and we do have an objection to the instrument being re-
[fol. 61] ceived under any theory that it is any proof of title in the United States as of the date of the withdrawal. It is merely, as we view it, an assertion on the part of the United States that it had such title and it properly included Section 36 in the withdrawal. As a matter of fact, we will admit, to save the record from being encumbered, that the withdrawal order was made.

Mr. Everett: The Ohio Oil Company joins in Mr. Ellery's statement.

The Master: It will be received as Plaintiff's Exhibit 1.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit 2, so marked for identification, an instrument entitled "Oil and Gas Prospecting Permit, Cheyenne 045175," issued by the Department of the Interior to R. W. Bennett, Upham, North Dakota, granting the exclusive right for two years to prospect for oil or gas on land described in the instrument, including Section 36, Township 58 North of Range 100 West of the Sixth Principal Meridian, Wyoming.

The Master: Is there any objection to the admission of Plaintiff's Exhibit 2?

Mr. Ellery: May I ask the theory under which it is offered?

The Master: I was just going to ask that.

Mr. Sonosky: the only purpose of Plaintiff's Exhibit-
[fol. 62] 2, 3, 4 and 5, so marked for identification, is to show that during the period in controversy the Government itself was exercising ownership of the same land in controversy.

Mr. Ellery: Then, we object to that, for the obvious reason that a plaintiff in an action to quiet title may not prove title by showing that he has asserted it, and we take it that they are offered, under Mr. Sonosky's statement, for that sole purpose only. If you have any other purpose, Mr. Sonosky, in offering them, we would like to have you disclose it at this time.

Mr. Sonosky: That is the purpose for which it is offered, and no other purpose.

The Master: As I understand it, it is offered for the purpose of showing that the Government at the time mentioned in here asserted its title?

Mr. Sonosky: Yes, and exercised ownership over the land.

The Master: I have some doubt as to its admissibility but I am going to permit it to come in as Exhibit 2.

Mr. Everett: May the record show that we make the same objection?

The Master: Yes.

Mr. Sonosky: The Government offers in evidence plaintiff's Exhibit 3, so marked for identification, an instrument entitled "Oil and Gas Prospecting Permit, Cheyenne
[fol. 63] 047383, issued by the Department of the Interior to Edith Merrill, Bridger, Montana, granting her the exclusive right for two years to prospect for oil and gas on the lands described in the instrument, including the West Half of Section 36, Township 58 North of Range 100 West. This document is dated February 19th, 1929.

Mr. Ellery: Do I understand it is offered for the same purpose?

Mr. Sonosky: Plaintiff's Exhibit 3, so marked for identification, and Plaintiff's Exhibit 4, so marked for identification, and Plaintiff's Exhibit 5, so marked for identification, are offered for the same purposes stated with respect to Plaintiff's Exhibit 2, now in evidence.

Mr. Ellery: May we have an objection on the ground already stated in respect to the reception of all of those exhibits?

The Master: The Government offered all three at the same time, Exhibits 3, 4 and 5, which speak for themselves, and it is not necessary to read the description into the record. Both defendants will have the same objection as to Exhibits 3, 4 and 5, for identification, and the ruling of the Master will be the same as to all of them and they will be received and marked as Plaintiff's Exhibit 3, Plaintiff's Exhibit 4 and Plaintiff's Exhibit 5.

Mr. Sonosky: And they are now in evidence?

[fol. 64] The Master: They are now in evidence for what they are worth.

(Whereupon, a document was marked for identification as Plaintiff's Exhibit 6 for identification.)

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit 6, so marked for identification, being a certified copy of the tract book of the District Land Office at Cheyenne, Wyoming, with respect to Section 36, Township 58 North of Range 100 West. It is offered for the same purpose as were Exhibits 2, 3, 4 and 5.

Mr. Ellery: We object to the introduction of this exhibit on the same ground as was made to the offer in evidence of the immediately preceding exhibits, and we at this time again ask whether or not this exhibit, or the other exhibits, are offered on any other phase of the case.

Now, I have in mind this, that if they are offered for the purpose of slipping in here something as to the known mineral character of the land, we want to add to the objection that they are obviously immaterial.

Mr. Sonosky: They are not offered for the purpose of slipping in here any evidence on the known mineral character.

Mr. Ellery: I didn't intend to use the word "slip" in any invidious sense. I just want to know about that so we can make a clear-cut objection.

[fol. 65] The Master: Let me say now that it will not be considered for any such purpose.

Mr. Ellery: All right, then, the record is in proper shape for our purposes.

The Master: It may be received and marked as Plaintiff's Exhibit 6.

Mr. Everett: May the record show that the defendant The Ohio Oil Company makes the same objection to all

of these exhibits as the State of Wyoming, and as to future ones, unless we wish to make a different objection?

The Master: Yes, and as to all future objections, the objection will be deemed to be the objection of both defendants.

Mr. Sonosky: At this time, Your Honor, I should like to direct attention to Paragraphs 4 and 5 of the Government's complaint and to Paragraphs 4 and 5, on Page 1, of the Defendants' answer. In Paragraph 4 of the Government's complaint, the United States alleges that the State of Wyoming claims some right, title or interest adverse to the United States, and in Paragraph 4 of the answer the defendant Wyoming admits that allegation of the complaint.

In Paragraph 5 of the complaint the Government alleges that the defendant The Ohio Oil Company claims some right, title or interest in Section 36 under an oil and gas lease or leases from Wyoming and now is and for many [fol. 66] years last past has been in actual possession of the section, and in Paragraph 5 of the answer that allegation is admitted.

I should like at this time also to definitely nail the claim of the defendants of surprise on the question of the good faith issue with respect to the accounting. I should like to refer Your Honor to the allegations contained on Page 2 of the answer of the defendants, reciting that "The Ohio Oil Company have at all times, in good faith, understood and believed, and still understand and believe, that the State of Wyoming is now, and for many years has been, the owner of said Section 36 and that the leases granted by the State of Wyoming to defendant The Ohio Oil Company were given and granted by the State of Wyoming and accepted and taken by defendant The Ohio Oil Company under and with such good faith, understanding and belief, and any and all exploration and development work done by the defendant The Ohio Oil Company in or upon said lands was done under said good faith, understanding and belief, and any oil or gas produced by the defendant The Ohio Oil Company from said lands was produced under said good faith, understanding and belief; that if the Court should find, adjudge and decree that the United States is now and always has been the owner of said Section 36, then and in that event the defendants allege that on any accounting in respect to the value of the production of said oil or gas, credit should be given to the defendants for any and

all proper expenditures made by the defendant The Ohio [fol. 67] Oil Company in exploration and development of said lands for oil and gas purposes, and for all proper expenditures and costs of operation incurred in the production of said oil and gas; that the defendants further allege in this regard that the costs incurred by defendant The Ohio Oil Company in said exploration, development and producing operation has exceeded the value tf any oil or gas produced from said land."

The Master: That matter is not before the Master at this time.

Mr. Sonosky: I am reading it to Your Honor for the purpose of leading up to the point I wish to make, Your Honor, if you will permit.

The Master: Go ahead.

Mr. Sonosky: I direct your attention to the opening paragraph of the Government's reply, wherein the Government, "for its reply to the answer of the defendants denies each and every affirmative allegation contained in the answer save as those allegations constitute an admission of matter alleged in the complaint and except as hereinafter admitted, qualified or otherwise alleged," which made it clear from the very beginning that the question of good faith was in the case and the defendants were plainly cognizant of it when they answered the Government's complaint.

At this time, Your Honor, I should like the record to [fol. 68] show that on September 1st, 1945, I air mailed two copies of a request for admissions to The Ohio Oil Company, addressed to Mr. Arthur M. Gee, General Counsel, and the originals were mailed to Your Honor at Yakima, and the request for admissions so stated in the original and the copies, and I assume the original will be made a part of the record. On the same date, Your Honor, I air mailed two copies of a request for admissions to the Honorable Louis J. O'Marr, Attorney General of the State of Wyoming, Cheyenne, Wyoming, and the original was mailed to Your Honor, and I assume the original will be made a part of the record.

At this time, Your Honor, I should state, too, that both requests for admissions mailed on that day requested that the return be made today. At this time I request that the defendants be directed to respond to the requests for admissions.

The Master: At this time your request will be denied, as it is not before the Master at this time, that question.

Mr. Sonosky: May the record show that, in view of the concept that the Master has taken of the case, the Government is unable to furnish the evidence, and is unable to put in any evidence now before the Master with respect to the accounting, and therefore is unable to rest its case in chief.

It does now rest its case on the merits, excepting therefrom the question of the accounting.

[fol. 69] The Master: The record will so show.

DEFENDANTS' MOTION TO DISMISS

Mr. Ellery: At this time, the Government having rested on the merits——

The Master: I don't want to interrupt, but I see that the hour of twelve o'clock has arrived.

Mr. Ellery: I am not going to argue it but I am going to make a motion, and it will be very brief.

The State of Wyoming—and I assume I may also state for The Ohio Oil Company——

Mr. Everett: Yes.

Mr. Ellery (Continuing): —moves for a dismissal on the ground and for the reason that the Government has utterly failed to introduce sufficient evidence upon which any decree quieting its alleged title in Section 36 could be predicated.

The Master: Do the defendants desire to argue that motion?

Mr. Ellery: Not unless Your Honor would like to hear argument. In fairness to the Government, we might briefly indicate the basis for the motion.

The Master: Yes, I would like to hear from you after recess a brief statement as to the basis of that, so the Government would be apprised of it, and I would, also.

Now, gentlemen, as to the hours of holding this hearing, of course, I realize that most of us are from out of town, and I also realize that the work we do here in the court [fol. 70] room is a small part of the work that you do in connection with the case while you are here. It is my desire to expedite it as much as possible and at the same time give you ample opportunity to prepare your case from time to time. I would suggest that we hold this hearing in the

morning from ten to twelve without a recess and from one-thirty to four-thirty in the afternoon, with a brief recess at about three-thirty. Is that satisfactory to all counsel?

Mr. Ellery: That is perfectly satisfactory with us.

Mr. Everett: And that is satisfactory with us.

Mr. Sonosky: That is perfectly agreeable to the Government.

The Master: Very well. We will stand in recess now until 1:30.

(Whereupon, at the hour of 12 o'clock, noon, the hearing stood in recess.)

[fol. 71] Pursuant to recess the hearing was reconvened at the hour of 1:30 o'clock, p. m., September 10, 1945, whereupon the following proceedings were had:

WITHDRAWAL OF MOTION TO DISMISS, ETC.

Mr. Ellery: If the Master please, we would like to withdraw the motion to dismiss which we made and substitute for that motion a motion for judgment on the pleadings and upon the state of the record of the testimony as it now stands.

I might say that any argument in support of that motion would involve the legal questions raised by the construction of the Organic Act and the Enabling Act and the effect of the approved survey of the exterior lines of the township.

Mr. Sonosky: I don't think it is necessary, but I think probably I should call to Your Honor's judicial cognizance in connection with the plaintiff's case in chief, the fact that this land was acquired by the United States through the Louisiana Purchase as part of the public domain.

Mr. Ellery: On that phase also we assume that Your Honor will take judicial notice of the history of the Organic Act and the Enabling Act and the Constitution of Wyoming.

The Master: Those are all matters of law. Now, leave to change the form of the motion will be granted, but the motion is denied.

[fol. 72] Mr. Ellery: Might we have a little time, Your Honor, to decide whether to go ahead with the evidence?

The Master: Yes. How long do you want?

Mr. Ellery: Until three o'clock, your Honor.

The Master: Then we will take a recess until three o'clock. I see no reason why we shouldn't give you until that time.

Mr. Sonosky: We have no objection. May we have one moment, Your Honor? I would like to consult with my associate.

The Master: Very well.

(Conference.)

Mr. Sonosky: We have no objection, Your Honor.

The Master: Then we will stand in recess until three o'clock.

(Whereupon, at the hour of 1:45 o'clock, a recess was taken until 3:00 o'clock, p. m.)

Mr. Ellery: At this time, if Your Honor please, the State of Wyoming and The Ohio Oil Company rest on the merits of the case, which we understand to be the question of the title as between the United States and the State of Wyoming, relative to Section 36 involved in this case.

The Master: Then the ruling of the Master necessarily [fol. 73] will be that the Government has proved title to Section 36, the ruling subject to change later under the state of the record. On your motion for judgment on the pleadings, it is incombent upon me to so hold.

Mr. Ellery: May we be heard on that?

The Master: Yes, I shall be very glad to hear from you at any length.

ARGUMENT RE RULING OF MASTER AS TO TITLE OF SECTION 36

Mr. Ellery: Do I understand from that that your present opinion is that the Organic reservation and the grant in the Enabling Act did not create a withdrawal of the unsurveyed sections? And I might follow that up, if I may: And that it is your present view that the approved survey of the exterior boundaries of the township did not sufficiently identify the Section 36 so as to constitute a withdrawal and place that section beyond further disposal of the United States?

The Master: I do not believe it is necessary for me to go that far. You have moved for judgment on the pleadings as well as the state of the record at this time. That motion, if it is proper, and I am assuming it is proper—you made it—admits the truth of those allegations in the complaint that are well pleaded. Isn't that true? And there is a pleading in this complaint—Paragraph 1 on

Page 5, which is admitted, of course, under the rules when you move for judgment on the pleadings. Isn't that true, [fol. 74] that you admit that Paragraph 1 on Page 5?

Mr. Ellery: What paragraph is that, Your Honor?

The Master: It reads, "All but the Southwest Quarter of the Southwest Quarter of Section 36, Township 58, was known to be mineral in character prior to December 20, 1892, when the survey of the exterior lines of said township 58 was accepted, and therefore only the Southwest Quarter of the Southwest Quarter of Section 36 of said township could have been covered by the Act of July 10, 1890."

Mr. Ellery: Well, on that point, the Government, in its application for leave to file, stated that in the event it was the law that the township survey satisfied the requirements of the 1890 grant, as to identity of the sections within the township, the question will arise as to whether Section 36 was known to be mineral land in 1892, when the township survey was completed and accepted. In that event, the Government will contend in 1892 the land was known to be mineral and therefore did not pass to the State.

Now, the statement was made in the petition for leave to file for this reason: that under the authorities if at the date that a school grant of land by the United States to the State would otherwise take effect, if there is no mineral claim or entry then pending against the land, the State takes presumptive title to that land, and the burden from then on would be upon the United States, in a proceeding brought [fol. 75] to set aside the grant, or at least as to that land which is presumptively passed—the burden would be upon the United States to show the known mineral character of the land. That is the only explanation you can find for their statement. The first position of the United States is that the United States did not acquire any interest in Section 36——

The Master: That is, the State of Wyoming?

Mr. Ellery: —the State of Wyoming did not acquire any interest in Section 36, because it was unsurveyed at the time the Enabling Act was passed. Then, in our answer, which also comes in on a motion for judgment, it is pled that at the request of the State of Wyoming, in March of 1892, a survey was made by the United States of Township 58, and that that survey was approved by the Commissioner of the General Land Office on December 20, 1892. We fur-

ther specifically plead that that approved survey established the exterior lines of fractional township 58; that it also established the three exterior corners of Section 36.

The Master: Pardon me, Mr. Ellery. Is it your position that under the motion for judgment on the pleadings the Court must consider the affirmative pleadings?

Mr. Ellery: Those that are admitted, yes.

The Master: Yes, those that are admitted.

Mr. Ellery: I am just coming to that point, Your Honor. [fol. 76] That is the pleadings. Now, the reply of the Government admits, in specific language—I might read that portion of the answer——

The Master: There seems to be a question of fact involved.

Mr. Ellery: That is what I am trying to bring out clearly, if I can. In paragraph 8 of the Answer it is alleged: "That in respect to said Township North, Range 100 West of the Sixth P. M. that said Coleman did not subdivide said township and did not survey and run the interior lines of Section 36 of said township, or mark the interior Northwest corner of said Section 36, and the plats, transcripts and field notes prepared by him and filed in the office of the Commissioner of the General Land Office, as aforesaid, so disclosed; that said Coleman did survey the exterior lines of said township and did survey the exterior lines of Section 36, and said Coleman did mark the three exterior corners of said Section 36, and his plats, transcripts and field notes filed with the Commissioner of the General Land Office, as aforesaid, so disclosed, and said survey of the exterior lines of said township and of said Section 36, with said markings of said exterior corners of said Section 36, together with the surveys of adjoining townships, made by said Coleman under his contract, were sufficient to identify said Section 36."

Now, in the reply to that paragraph the United States admits and alleges, as to Paragraph 8 of the First Separate Defense: "Plaintiff admits that Coleman did not subdivide [fol. 77] said Township 58, but did survey the exterior lines of said Township 58, and did mark the three exterior corners of Section 36, in said Township 58; plaintiff alleges that Coleman did not make a survey which subdivided said Township 58 into sections, and did not survey any of the lines of said Section 36."

Now, down to there, if Your Honor please, we have the direct allegation in the answer that a survey of the exterior lines was made, how it was made, and what it established, namely, the exterior lines of the township and the exterior corners of said Section 36, and that is specifically admitted by the United States.

In other words, the pleadings, or the complaint, simply allege title in the United States. By the answer, the defendants allege the Organic Act and its reservation, and specifically allege the Enabling Act and its grant, and those are admitted by the reply. So we have the issues made upon the pleadings between the United States and the defendants of the legal effect of the grant in the Enabling Act of the State of Wyoming.

Does Your Honor follow me that far?

The Master: Yes.

Mr. Ellery: We wouldn't need any evidence on that. The pleadings themselves present that issue, and we couldn't do anything to bring that issue before Your Honor any [fol. 78] more by any evidence. As I said, the Organic Act is admitted, and the reservation, and the wording of our Enabling Act, which we hope to point out, is different. Those matters are all before Your Honor at this time.

Now, as I view it, under the pleadings at this time those facts are established by the pleadings, and Your Honor would at least have to consider the question of what the effect of the Wyoming Enabling Act was, read in the light of the reservation, and so forth.

The Master: Would the Wyoming Enabling Act in any manner change the rule as to vesting of title on known mineral lands?

Mr. Ellery: I will come to that, Your Honor.

Now, we come down to the Coleman survey. The facts as to the Coleman survey are alleged and are admitted by the Government, and it is further alleged in the answer as a separate defense that the Coleman survey was accepted. So, we have the pleadings in shape where the Coleman survey and its acceptance is admitted, and it is admitted that the exterior lines of the township were established and the three exterior corners of the section were established. That is the issue before Your Honor.

Now, we come down to the point that I think you have in mind, which is that, regardless of those issues, if we

admit the allegations of the affirmative matter in the reply, we have admitted ourselves out of court?

[fol. 79] The Master: That is the point that I had in mind.

Mr. Ellery: As I understand the rule, there isn't any provision for affirmative matter in the reply, and if there is any affirmative matter in the reply the burden of proof is on the party asserting it. Would Your Honor like some authority on that?

The Master: Have you a case on that?

Mr. Ellery: I might go back on the question of the rule, apart from any question of pleading, for the time being.

Now, this question of whether or not a school section was known mineral land has been considered by the Land Department a number of times, and also by the Court. I will state the rule briefly, as I understand it, the rule being that if at the time a grant of school land would otherwise take effect—for instance, under the pleadings as to the Coleman survey, for instance, we have a situation where it is established that at least the township survey was approved and that the three exterior corners were established, and if the Government admits that if that was sufficient to identify Section 36, then title passed unless it was coal land, because that is their direct representation to the Supreme Court in their application for leave to file. They say, "The State, it is believed, may contend that title to Section 36 passed to it upon acceptance of the 1892 survey of the township and therefore Section 36 was not 'public land' avail-[fol. 80] able for withdrawal by the President under authority of the Act of June 25, 1910. The grant of school lands made by the 1890 Act admitting the State expressly exempted 'all mineral lands' from its operation and authorized lieu selections. If as a matter of law the township survey satisfied the requirements of the 1890 grant as to identify of the sections within the township the question will arise as to whether Section 36 was known to be mineral land in 1892 when the township survey was completed and accepted."

Now, on the proposition, then, that it seems clear that under one phase of the facts in this case which are now at issue, Your Honor or the Supreme Court might decide that the establishment of the exterior lines of Township 58 and the establishment of the three exterior corners of Section 36 were sufficient to identify Section 36, so that if the

mineral character does not intervene, title passed to the State.

So, now, as I look at it, the question is, who has the burden of establishing that Section 36 was known or unknown mineral land as of 1892? Now, the Government said they would contend that if, as a matter of law, the township survey was sufficient to identify, then they would contend that, regardless of the fact that the law is that the approved township survey, with the establishment of the three exterior corners, was sufficient to identify Section 36, and that, notwithstanding the law that that section thereupon passed [fol. 81] to Wyoming by reason of that identification, nevertheless the Government is going to say, in the face of that legal proposition, "Well in any event, the land was known mineral in 1892, and therefore did not pass under the grant."

Now, the first and only party who has made any assertion as to the mineral character of this land is the United States, and I think they did it under the rule that presumptive title passed to Wyoming upon the approval of the township survey. Assuming that that is the law that that identified the land sufficiently, then title would pass, and our position is that, accepting that as the rule, that if the approval of the township survey, which established only the exterior lines of the township and the three exterior corners of the section, was sufficient to identify Section 36, then Wyoming took presumptive title, unless at that time Section 36 was known mineral land.

Now, on that point I might just refer to one or two of the Land Decisions before going to the court cases. In 32 Land Decisions, Page 39, the following rules were laid down——

Mr. Sonosky: Does that have a name, Mr. Ellery?

Mr. Ellery: That doesn't have a name, like a lot of land cases.

> "The following rules and regulations will be observed in the adjustment of the grants to the several State- [fol. 82] and Territories made in aid of the support of common schools, where the mineral or non-mineral character of the lands sought to be selected as indemnity, or those made the base for an indemnity selection, is involved—"

In other words, the primary sections.

> "Rule 1. When a school section is identified by the Government survey and no claim is at the date when the right of the State would attach, if at all, asserted thereto under the mining or other public land laws, the presumption arises that the title to the land has passed to the State—"

Now, we are right down to the point where they say, "Well, as a matter of law, if that township survey made in 1892 was sufficient to identify it, then the land was known to be mineral in character." Now, let's keep that in mind.

> "The presumption arises that the title to the land had passed to the State, but this presumption may be overcome by the submission of a satisfactory showing to the contrary."

Now, that was in 32 Land Decisions, 39. Then, again, in the same Land Decisions, 32 Land Decisions, 117, that was an application by the State of Utah for the determination by the Department of the Interior as to the mineral character of a school section. The State itself filed an application and wanted that done, and it was rejected for this reason——

The Master: They wanted lieu land for the particular school section?

[fol. 83] Mr. Ellery: That's right.

> "There is nothing in the record to show that any claim under the mining laws was asserted to the lands here in question, or to any portion thereof, at the time when the right of the State must have attached thereto, if at all (which was the date the State was admitted into the Union), and it is therefore to be presumed that they passed to the State under its said grant. In view of this presumption, which subsists until overcome by satisfactory proof to the contrary as provided in said circular, the Land Department would not be justified to order a hearing as asked by the State in its petition. The lands being presumably the property of the State under its said grant, notwithstanding the mineral return of the Surveyor General, no useful purpose could be accomplished by such a proceeding."

There, the Land Department had a situation where the Surveyor General's return showed the land as mineral, and when the State went in to get a determination, the Land Department says, "This presumption is so strong that the mere return of the Surveyor General is not sufficient to overcome it, and in the absence of something else we won't order any hearing."

Now, at least one of these rulings was referred to in Work v. Braffet, 276 U. S. 560; 48 S. Ct. 363. In that case the Court said—

> "At this time, and for many years before, the settled [fol. 84] practice of the Land Office, under Rule 1 of the Regulations of March 6, 1903, 32 L. D. 39, had been to treat applications for purchase, under the mining laws, of parts of a section designated in the school-land grant, where made after the date when the grant would attach if the land was non-mineral, as a contest of the State's right."

That is the language of the Supreme Court. In other words, here we have, under our theory, an approved survey of the exterior lines of Township 58 and the establishment of three exterior corners of the section, which we say identified it so as to pass title. Now, the Government says, "If that is the law, we are going to say that is mineral land and was mineral land in 1892." That is the rule applicable to them when they do that.

Then the Court goes on to say—

> "Braffet's application was so treated. The State was cited and answered, protesting the application, and setting up that the lands were not known coal lands on the date of the grant to it. The coal company intervened and made like answer. Braffet assumed the burden of the contest and offered evidence."

In other words, the Court held that that was improper, and that he didn't have the burden.

Then, the Court goes on—

> [fol. 85] "The departmental regulations of March 6, 1903, 32 Land Decisions, 39, withdrew school lands from entry with direction to local officers to treat applica-

tions for them in the same manner as contests. Rule 1 reads:

"'When a school section is identified by the Government survey and no claim is at the date when the right of the State would attach, if at all, asserted thereto, under the mining or other public-land laws, the presumption arises that the title to the land has passed to the State, but this presumption may be overcome by the submission of a satisfactory showing to the contrary.'"

That was even subsequent to the approval of the township survey.

Now, the Supreme Court then says—"This rule has never been expressly repealed. The Department has consistently held that it is applicable to school land."

Now, a little further on, the Supreme Court says—and that is this same case of Work v. Braffet again—"But we think that the exception in Section 37 (30 USCA Sec. 193) was not intended to save so nebulous and insubstantial a claim as that of the privilege of contesting the presumptive title of the State." Now, that language is entirely apart from any regulation or anything else. That is a direct statement of the Supreme Court, that presumptive title vested in the State.

The Master: Mr. Ellery, did I get that citation correctly? That is 276 U. S.?

[fol. 86] Mr. Ellery: Yes, 276 U. S. 560, 48 Supreme Court, 363. That is the West publication.

The Master: And the date, did you say, was 1903?

Mr. Ellery: The regulation was 1903.

The Master: That would be a very late decision of the Supreme Court?

Mr. Ellery: It is about 1925 or 1926, along in there, and that is the latest expression I know of by the Supreme Court. That language is significant, because it so clearly establishes the view of the Supreme Court as to the presumptive title, when the Court says—"But we think that the exception in Section 37 was not intended to save so nebulous and insubstantial a claim as that of the privilege of contesting the presumptive title of the State." We have referred to that previously.

Now, we come down a little later, and we find the case of the United States against Standard Oil Company of California—and Your Honor may have read that case. It is in the Circuit Court of Appeals, in 107 Fed. (2) 402. I have this case cited as 21 Fed. Sup. 645, 107 Fed. (2d) 402. Certiorari was denied by the Supreme Court.

Now, in that case, the action was initiated by the United States to quiet title to certain oil lands under the theory that the title to said lands did not pass to the State of California upon the approval of the survey thereof because said lands were known mineral lands at the time such [fol. 87] survey was approved. That is the exact allegation and contention of the Government here with respect to the approval of the township survey in 1892. They say that if it was so identified, nevertheless, it was known mineral land at that time.

Prior to the filing of the suit by the United States, the Secretary of the Interior, in a proper proceeding, had found and determined that said lands were known mineral lands at the time of the approval of the survey, and that, therefore, title to said lands never passed to the State of California.

The United States assumed the burden of proving its title, and as a part of the evidence introduced by the United States to prove its chain of title the findings and decision above mentioned made by the Secretary of the Interior were offered and received in evidence.

In the case at bar the question of whether or not the lands involved here were known mineral lands at the time of the approval of the Coleman survey has never been considered or determined in any proceeding in the Land Office.

Under the Braffet case, the presumption exists that title to Section 36 passed to the State of Wyoming upon the approval of the Coleman survey. In other words, the presumption exists that Section 36 was not known mineral land at the time of the approval of the Coleman survey. The United States, therefore, in order to prove title must intro- [fol. 88] duce evidence which satisfactorily rebuts this presumption and which proves by a full preponderance of the evidence that Section 36 was known mineral land at the time of the approval of the Coleman survey, that is, the approval of the township survey which established the exterior lines of the township and the three exterior corners of the section, and that was in 1892, and the Government's position

is that if that was such a survey as to identify the section, then, admittedly, title passed if the lands were not known mineral, and they say, "We can show that the lands were known mineral lands, and therefore presumptive title is eliminated."

Now, in the case of the Standard Oil Company of California against the United States, 107 Fed. (2nd) 402, the Circuit Court of Appeals said—

> "Known mineral lands embraced in the general grant remain subject, after survey, to location and disposition under the mineral laws, Work v. Braffet, supra, or to withdrawal from entry in the interest of the whole body of the nation. In doubtful cases, at least, the determination of known mineral character is an essential step in the identification of the land granted, as much so as is its identification by survey. In such cases the State's title remains imperfect or inchoate, or 'presumptive.'" Citing the case of Work v. Braffet.

Now, that is the background of the law which, I assume, [fol. 89] explains the statement of the United States made to the Supreme Court in its application to file, when they said that if the law is that the approval of the township survey which established the exterior lines and the three exterior corners of Section 36 was sufficient to identify that section, then they claim, as in all other cases they have claimed, that if, after the survey identifying the section, which, they will say, is to be a subdivisional survey, but, for these purposes, if the law is that that township survey is sufficient to identify that section, then the Government says, "We will contend, nevertheless, that the land was known mineral."

Now, that raises that issue, in this way—they filed a conventional action to quiet title——

The Master: You understand, of course, Mr. Ellery, that the preliminary statement to the Supreme Court is not a part of the pleadings?

Mr. Ellery: Certainly. It is just the basis to explain this reply, Your Honor.

They filed a conventional action to quiet title and merely alleged that they are the owners in fee simple of the land. The defendants' answer or allegations raised this Coleman

survey and its approval, the township survey and its approval in 1892.

Now, as a part of their case, under their allegations of [fol. 90] ownership—and I don't think that there is any doubt but they would have had the right and privilege to go ahead and prove that title on any theory—in other words, they could contend that the reservation in the Enabling Act did not pass title or segregate, and they could contend that the approval of the Coleman survey did not pass any interest or segregated the land so it was no longer subject to disposition, then they could also, as a part of their case, show that the land was known mineral land in 1892.

Now, the establishment of the first proposition or the establishment of the second proposition would throw the burden on the United States to defeat the State's title by something else. What was it? It is simply that it was known mineral land in 1892.

Now, they were, I think, apprehensive that their complaint might not have permitted them to introduce this known mineral character, which they had announced they would introduce evidence or make a contention in respect to. So, in the reply of the United States, down at the bottom of Page 4, after they have pleaded the portions of their reply which state the admissions or denials, the Government states—"For further reply to the answer of the defendants plaintiff alleges: That all but the Southwest Quarter of the Southwest Quarter of Section 36 of said Township 58 was known to be mineral in character prior to December 20, 1892, when the survey of the exterior lines of said [fol. 91] Township 58 was accepted, and therefore only the Southwest Quarter of the Southwest Quarter of Section 36 of said township could have been covered by the Act of July 10, 1890, admitting Wyoming into the Union."

Now, if we had filed—I don't know what you would call it, because there isn't any provision for it—but if we had filed a denial of that——

The Master: It is deemed denied, isn't it?

Mr. Ellery: Yes, it is deemed denied.

The Master: That being deemed denied, just what effect does your motion for judgment on the pleadings have? That is the point I am interested in. If you had simply rested your case, that would have been different, but you first moved for judgment on the pleadings.

Mr. Ellery: That's right.

The Master: What effect does your motion for judgment on the pleadings have? Is it not to be deemed as admitted by your motion?

Mr. Ellery: By a motion for judgment on the pleadings?

The Master: Yes.

Mr. Ellery: We denied that.

The Master: But that is an affirmative pleading by the Government?

[fol. 92] Mr. Ellery: Yes, and it is denied as a matter of law.

The Master: That has been denied?

Mr. Ellery: Yes.

The Master: I know, but when a motion is made for judgment on the pleadings, you waive that denial, do you not?

Mr. Everett: May I interrupt a moment? The motion for judgment on the pleadings and the state of the record was made at the close of the plaintiff's case, and, presumably, matters that are well pleaded are deemed to be true at that point, and the Government's reply as to the mineral character of the land might be taken into consideration then. But thereafter we announced that the defendants rest and we did not then renew the motion.

The Master: I had already overruled your motion for judgment on the pleadings and the state of the record.

Mr. Everett: Now, we come back—you remember that we adjourned for the purpose of deciding whether we would go ahead, but we rested then, so that the matter under consideration now, it seems to me, is who is entitled to judgment. Now, on the motion, we will say, although we are not waiving it—what is the situation here, the plaintiff having rested and the defendants having rested?

Mr. Ellery: Any motion that we may have made to dismiss or for judgment on the pleadings, we intended to with-[fol. 93] draw, and simply announced that we rest. I think that covers Mr. Everett's angle of it.

The Master: Your positions aren't the same. Mr. Everett says that you haven't waived your motion for judgment on the pleadings, and you state that you are withdrawing it now.

Mr. Ellery: The motion we made, Your Honor, was intended simply as a motion for judgment on the pleadings and state of the record as it now stands. That is rather technical.

But to go back to Your Honor's interest in whether or not an affirmative allegation in a reply, which is deemed to be denied, must be considered as admitted when the defendant asks for judgment on the ground that under the allegation of the pleadings and whatever evidence is introduced the plaintiff has failed to make a case, I want to refer Your Honor—it doesn't seem to me to be possible that where you include an affirmative allegation in a reply, or, in other words, you have an affirmation, or you yourself make the affirmative allegation—and, of course, no one but the United States has made any allegation touching the mineral character of this land, and for the first time that is made in that portion of the reply which is in the nature of affirmative matter, which, again, is not according to the rules, as I understand them, but it is in there, and they are bound by [fol. 94] the significance of the fact that it is affirmatively pleaded as a part of their reply.

"The burden of proof is on the party affirming and seeking relief." We will give Your Honor these excerpts from the cases later. "Party asserting affirmative issue has burden of proof."

These are elementary propositions, but I had to look them up to see what they meant.

"Burden of proof lies on him who asserts affirmative of an issue." "Burden of proving issue made by replication to answer was on person filing it." "Burden of proof of material fact is upon party pleading it."

Now, there isn't any pleading on the proposition of no mineral character of land, except by the Government, and under the authorities as we understand them the State took affirmative title if that township survey was sufficient to identify in 1892 the affirmative title passing to the State. Now, it has not been challenged since 1892 until this proceeding was filed, and the Government then take the position, well, it was not surveyed. We say Coleman surveyed it in 1892, and he established the exterior lines and he fixed the corners. Well, the Government says, "We do not think that is good, but, if it is good, then we will contend that the land was known mineral land and was therefore excluded from the grant."

[fol. 95] The way it looks to me, as the matter now stands, the issues on title, apart from the known mineral character of the land, are before Your Honor under the allegations

and admissions of the pleadings. In other words, the Enabling Act, the reservation. Those are all admitted. The Coleman survey and its approval, and the establishment of the exterior lines, and the question of whether that identified Section 36. Those are all before Your Honor on the facts as established by the pleadings. There isn't a thing left here that Your Honor would have to consider on the question of title, except the known mineral character, and that is something which the United States has not only alleged in their pleadings but which I think under the authorities they must prove, and if they offer no evidence on it, the case is in your hands on the question of title without anything on the mineral character of the land.

Mr. Sonosky: First, Your Honor, I would like to have the reporter read back the motion made by the defendants before they took their hour and a half recess.

Mr. Healy: If Your Honor please, I would like to make this statement now: That motion, as everyone recalls, was a motion which was made on the close of the plaintiff's case. The plaintiff rested, and the Master denied the motion at that time, on the theory which has been expressed here that the motion might be considered as taking in or con- [fol. 96] sidering those matters well pleaded as for the purposes of that motion only. Thereafter, we took time out to decide whether we would introduce any evidence on behalf of the defendants. And when we rested, as I recall it, we made no motion whatever. So that without withdrawing the motion, which was overruled, as I see it, we are not discussing that motion because that was denied. Now, the state of the record, which is for the Master to decide at this time, is where both parties have rested, and it is not on a motion for judgment on the pleadings at this time.

Mr. Sonosky: I wonder if I might finish without interruption?

The Master: Yes.

Mr. Sonosky: If Your Honor please, I want the reporter to read back the motion made by the defendants before the recess.

Mr. Everett: I have a copy of it. Does the Master want it?

The Master: Let me see it.

Mr. Sonosky: I would like to hear it, Your Honor.

The Master: You may see it (handing paper to counsel).

Mr. Sonosky: May the record show that I was handed a copy of the motion——

Mr. Everett: If Mr. Sonosky is not satisfied with the copy, will you please refer to your notes?

[fol. 97] We want to clear this record now, as far as that is concerned.

Mr. Sonosky: I am just asking if we may have it read. I have not been heard through.

Mr. Ellery: There is no reason why we should not try to clear our record. To make it clear, all motions to dismiss, that were denied, are of course, out; but if this record shows that we inadvertently made a motion for judgment on the pleadings, we withdraw that, and we simply rest.

The Master: The Master will permit the withdrawal of the motion for judgment on the pleadings at this time. Now, as to a decision on the merits of this case at this time, I am not prepared to rule that the land was either identified or not identified by the original survey of Township 58; so the Government may proceed with its case as to the mineral character of the ground.

Mr. Sonosky: Your Honor, I may be a little confused as to the state of the record. I understand that the motions for judgment on the pleadings have been withdrawn?

The Master: That is right, and they simply rested their case.

Mr. Sonosky: The Government rested, and the defendants rested, and now the question——

The Master: Is on the affirmative matter of your reply.

Mr. Sonosky: The question is now whether the Govern-[fol. 98] ment wishes to go forward with its case or whether the Government is willing to submit this title issue on the record of the withdrawal as it now stands.

The Master: That is right.

Mr. Sonosky: Then the Government will request the Master to permit us to have a recess to consult for the same purpose.

The Master: How long do you want?

Mr. Sonosky: Well, it is five minutes to four, and Your Honor said that court will be held until 4:30. Perhaps we should adjourn for the day.

The Master: Before we adjourn, gentlemen, there are one or two questions I have. On this question of accounting and the Government's demand for admissions, this is rather

out of order, but I want you all to be advised of my position, so that you may govern yourselves accordingly.

In the first place, I am going to try to follow the rules laid down for the District Court. I do not consider they are absolutely binding on the Special Master in this case, but if you apply those strictly to the Government's demand for admissions, it is rather untimely. They were apparently served on the first of September. The rules provide that you must reply in ten days. Tomorrow would be the tenth day. The rules further provide that the matters sought are deemed to be admitted unless the adverse party files a [fol. 99] sworn statement of why he cannot answer, or a sworn statement denying them. Inasmuch as the demand itself was not timely, I will say, in my opinion, the rule does not intend to obtain admissions on the date of trial but, rather, as means of discovery prior to trial. I am not, therefore, going to rule that they have admitted those facts, but I will again urge you all to attempt to agree upon the figures, if there is any issue in that particular. I should be very glad to stay here for days, if necessary, to hear testimony on it, but I see no reason, where you have a case between the United States and the State of Wyoming, why there should be any question on facts such as those, and that the attorneys should not get together and agree on 99 per cent of it.

Now, something has been said about the question of good faith. That goes into the question, I understand, as to whether or not the Special Master will hear evidence on the right of offset, if it comes to that point as to their claim—offsets against any recovery. The defendants state that they were surprised by the claim of bad faith, and it is the Government's position, as I understand it, that they should have understood at all times that they were faced with that issue of bad faith.

Now, please again consider what I am saying is not a final ruling on any of these matters, but simply what I have in my mind at this time.

[fol. 100] In the consideration of any transaction between parties such as this lease between the State of Wyoming and the defendant The Ohio Oil Company, there is always a presumption of good faith, and I believe it is my duty to indulge in that. Even if the pleadings on the part of the defendants in this case were utterly silent on that point that they entered into this lease in good faith, my present

thought is that it would be my duty to indulge in the presumption that they did act in good faith under a claim of title.

The Government has also pleaded in its complaint that The Ohio Oil Company was in possession as a lessee under the State of Wyoming and under a claim of title. If the Government had intended to charge willful and malicious trespass or bad faith, it seems to me that it was the duty of the Government to so charge, and, in the absence of any affirmative charge of bad faith, the Special Master is of the present opinion that he will not hear testimony as to that; that he will not hear testimony that goes to the question of bad faith, because I do not believe bad faith has been properly pleaded.

Mr. Sonosky: Does Your Honor wish to hear any argument on that?

The Master: Not at this time. When the question arises I will be glad to hear you. But I am advising you of that so that if you do not agree with me, when the question arises you will know what is in my mind.

[fol. 101] Mr. Sonosky: We are prepared to show that the burden is on the other side to prove this. Before we recess, Your Honor, what is the status of my request for admissions now?—that they have never been served?

The Master: Yes. Your request at the present moment is as though there had been no service of a request for admissions, because it was not timely under the District Court rules.

Mr. Sonosky: If Your Honor please, all I can say is that there is positively no basis for my proceeding with the discussion of accounting unless there is some compulsion on the defendants to come in and tell us whether they do or do not admit these facts. Now, we cannot go forward; we will have to stop here and resort to the discovery process, and go back and get their books out, and it would be ridiculous to go through that.

The Master: This is for the advice of all counsel: When we are at the point in this case where I deem the evidence of any accounting is admissible and material, I am going to have a further session with counsel and I am going to insist upon either admissions or denials. I do not propose to have counsel go into this item by item, but I do urge an agreement on it.

Mr. Sonosky: That is fine. That is perfectly satisfactory, and I am sure we will reach an agreement as to 90 [fol. 102] per cent. This is a case between sovereigns, but the other sovereigns did respond and did furnish us with a statement.

Mr. Gee: If Your Honor please, may I say, as one of counsel for defendants, that we have met repeatedly in an effort to get together, and I can say to Your Honor and to opposing counsel that we are still willing to talk about these things. My recollection is that the last reply came from us.

Mr. O'Marr: There is one thing about the notice I am not clear about. Have you taken into consideration the fact that where notice is served by mail, three additional days are allowed.

The Master: Well, I have already ruled on that.

Mr. O'Marr: So that we are not required to file that at this time?

The Master: No.

Mr. O'Marr: Very well.

The Master: I have made myself clear on that. We will stand adjourned until ten o'clock tomorrow morning.

(Thereupon, at 4:10 o'clock, p. m., a recess was taken until 10 o'clock, a. m., September 11, 1945.)

[fol. 103] Pursuant to recess, the hearing was reconvened at the hour of 10 o'clock, a. m., September 11, 1945, whereupon the following proceedings were had:

The Master: Are you ready to proceed?

Mr. Sonosky: If the Master please, yesterday, before we adjourned, the Government requested an opportunity to consider whether it wished to go forward with its case or whether it was willing to submit the title issue on the record of withdrawal as it now stands. We have considered that, Your Honor, and we have reached the conclusion, and we feel, in justice to the Court and to you, a full and complete record should be made on the most vital question in the case, so that when the case is considered by you and when it is presented to the Court itself, you should have before you those documents necessary to a determination, and, while we are confident that we could stop here and argue from the pleadings the law in the case, we feel that that is not the proper thing to do in a case of this kind,

and the United States particularly feels that it owes an obligation to present a full and complete record, and for that reason we will go forward with the rebuttal.

Mr. Ellery: Just a moment. Do I understand that you are going forward on rebuttal or are you seeking to open [fol. 104] your case and put in further evidence of title, on which you have the burden of proof?

Mr. Sonosky: We are going forward with our rebuttal on the title question.

The Master: I might say, Mr. Ellery, I am not so interested in whether it is considered a reopening of their case for rebuttal. I am interested in hearing that testimony.

Mr. Ellery: I expect that, but I want the record also to show that the State does not consider it as rebuttal.

The Master: The record may so show.

Mr. Everett: The Ohio Oil Company should have a chance to rebut anything of this sort, too. In other words, we don't consider this as rebuttal evidence in any sense of the word. The parties have both rested on the title feature of the case.

The Master: I understand that, and you will be given ample opportunity to rebut any of this testimony, whether it is rebuttal or sur-rebuttal, or whatever you may call it.

Mr. Ellery: Might I further make a record at this time, Your Honor?

The Master: Yes.

Mr. Ellery: If the United States intends now to offer all of the various documents taken from the files of the United States Land Office which go to simply show that they are admissions as to the Coleman survey being made, and what it did, and that it was approved, we simply sug- [fol. 105] gest that is encumbering this record with a mass of testimony, which constitutes an unnecessary expense upon the parties.

Mr. Sonosky: Is Your Honor interested in hearing me on that point?

OFFERS IN EVIDENCE

The Master: Yes. Just what is it now that you propose to offer?

(Whereupon, three documents were marked as Plaintiff's Exhibit 7, Plaintiff's Exhibit 7-A, and Plaintiff's Exhibit 7-B for identification.)

Mr. Sonosky: I propose to offer the complete record of the surveys.

The Master: Just in what ultimate fact is there an issue of fact joined by those surveys?

Mr. Sonosky: Your Honor, if you will take the answer in hand and the reply, you will see that if this case goes up on the mere pleadings here, what is going to happen is that there is going to be an argument between the parties in the Appellate Court as to what a particular letter or document did or did not do, as judged from the pleadings.

The Master: Now, let's take them one by one, and get them into some sort of a series of facts here.

Mr. Sonosky: All right. Now, take Page 3 of the answer—that is the beginning of the first defense. Paragraph 1 is denied. Now, that partially is a question of law—Paragraph 1 on Page 3.

[fol. 106] The Master: Is that denied?

Mr. Sonosky: Yes.

Mr. Everett: No, that is admitted.

The Master: Yes, it admits the allegation.

Mr. Sonosky: That's right. I should not have said it was denied. It is an admission that the Organic Act exists, but it alleges—that is just a question of law. That is true. The same thing is true of the next paragraph, Paragraph 2.

The Master: That is purely a question of law.

Mr. Sonosky: Now, as to the third paragraph, that is denied.

The Master: All, right, now, I will hear testimony on that. That is denied on information and belief.

Mr. Sonosky: Now, in the fourth paragraph, we deny the fourth paragraph, and the Government affirmatively alleges that by a letter dated March 7th, 1892, the State Board of Control of the State of Wyoming requested the United States Surveyor General for Wyoming to cause to be surveyed and subdivided a number of townships, including the township in contest.

The Master: That letter, under that state of the pleadings, should be in evidence.

Mr. Sonosky: In Paragraph 5 we substantially deny the whole of it, and if Your Honor will note, there is even [fol. 107] a difference in the dates, and we allege that on

March 8, 1892, which is a date that doesn't even appear in their allegation in Paragraph 5——

The Master: They say the date of the contract was the 28th day of April, 1892, and you say——

Mr. Sonosky: We say that on March 8th the Surveyor General entered into a contract, and included as a part of the contract were instructions dated March 11, 1892—that is not alleged in there. That is not alleged in the answer. We allege that in the instructions dated March 11, 1892, from the United States Surveyor General, Coleman was instructed, among other things, that the survey had been requested by the State Board of Control of the State of Wyoming, and that by a letter dated April 11th, 1892, the United States Surveyor General for Wyoming submitted to the Commissioner of the General Land Office said contract.

The Master: I will hear your proof on that. That is all documentary?

Mr. Sonosky: That is all documentary.

Mr. Ellery: I might say at this time that the State of Wyoming admits the facts set forth in Paragraph 5 of the reply of the United States.

Mr. Sonosky: It doesn't occur to me why, then, the defendants are so anxious to keep from the Court the very documents that the Court should have, and Your Honor is [fol. 108] able to look at these documents and determine from them what they are, and you shouldn't have to determine that from what either of the parties say they are.

Mr. Ellery: Now, what we have in mind is this: We have in mind, when the issues can be made up by pleadings and admissions by the parties, the present view of the courts is that a mass of testimony should not be taken. Now, all we desire to do is to present to the Master the proposition that both parties agree that the Coleman survey was made and that it established the exterior lines of the township and the three exterior corners, and that it was made and that it was filed with the Commissioner of the General Land Office prior to 1892, and was approved by him on December 20th, 1892.

The Master: I understand that. In view of the admission by the defendants, I shall certainly find Paragraph 5 in the language as pleaded. No proof could be added to that, and you couldn't go beyond that, anyway, and under

the admission by the defendants the facts pleaded in that paragraph are true, and the Master will so find.

Now, as to Paragraph 6?

Mr. Sonosky: As to Paragraph 6, we deny it except as it is qualified in the reply. We allege that "the United States Surveyor General for Wyoming advised the Commissioner of the General Land Office that Coleman had com-
[fol. 109] pleted the surveys under the contract and that the surveys were ready for examination in the field; plaintiff further admits that on August 11, 1892, the Commissioner of the General Land Office authorized the United States Surveyor General for Wyoming to make a personal inspection of the surveys made under the contract."

Mr. Ellery: To clear up, Mr. Sonosky, any possibility of admission of any of the facts mentioned in your Paragraph 6, the State of Wyoming at this time admits all of the allegations of the Government contained in Paragraph 6.

The Master: The Master will therefore find those to be the facts; so it is not necessary to have proof on that.

Mr. Sonosky: How about Paragraph 7?

Mr. Ellery: That is nothing but an allegation, and the defendants admit it.

The Master: I see no real difference between your language and their language, as to Paragraph 7.

Mr. Sonosky: I think there is a substantial difference in our language, of the Commissioner of the General Land Office being fully advised and being within his authority.

The Master: That is a conclusion of law.

Mr. Sonosky: All right. Now, as to Paragraph 8.

Mr. Ellery: You plead there exactly the same things which we allege in our petition, except that you plead as a conclusion that the survey of the exterior lines of the town-
[fol. 110] ship did not constitute a survey of any of the lines of Section 36, which is a corner township. That is the only difference.

Mr. Sonosky: Where is that? Where do we plead that conclusion?

Mr. Ellery: Down at the bottom, Paragraph 8 of your reply: "As to Paragraph No. 8 of the First Separate Defense plaintiff admits that Coleman did not subdivide said Township 58," but does admit—that is interpolated—"but did survey the exterior lines of said Township 58 and did mark the three exterior corners of Section 36 in said Town-

ship 58. Plaintiff alleges that Coleman did not make a survey which subdivided that Township 58 into sections and did not survey any of the lines of Section 36 or of any other section in said township."

Well, theretofore we had alleged that very thing.

Mr. Sonosky: Where is the conclusion of law? I still do not find it, as you mentioned.

Mr. Ellery: You apparently contend that a survey of the exterior lines of a township does not survey the line of any exterior section of that township.

The Master: I do not see where there is any question involved there. You both have pleaded the same thing, in slightly different language. There is running through them your own conclusions of what the effect of that survey was.

Mr. Ellery: That is right.

[fol. 111] The Master: Now, that is a question to be determined by the Court.

Mr. Sonosky: Yes, Your Honor, but the Government would not be satisfied to have this record go up without the documents in the record for the Court's consideration. I should like to offer those documents.

The Master: Proceed and offer the documents, and the question as to whether or not the Court will receive them in evidence will be passed upon at the time they are offered.

(Thereupon documents were marked for identification as Plaintiff's Exhibits 8-A, B, and C, and 9.)

The Master: I might say, Mr. Ellery, as far as encumbering the record, of course, any document which is identified, whether it is admitted as an exhibit or not, will necessarily go up with the record.

Mr. Ellery: We do not mind it going up, Your Honor, but we do mind the running up of any bill of costs on matters that are not material.

The Master: We cannot prevent that. Any document that is identified will go up with this record, whether it is admitted in evidence or not.

Mr. Ellery: Yes, but it goes up in a separate package, as evidence which was not admitted by the Master.

The Master: Well, none of these exhibits will be read into the record. They will go up.

[fol. 112] (Thereupon documents were marked for identification as Plaintiff's Exhibits 10 to 32, A and B, inclusive; 33 to 37, A, and B, inclusive; and 38 to 48, inclusive.)

(Short recess.)

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 7, so marked for identification, a letter dated March 7, 1892, from the President of the Board of Control of the Engineer's Office, State of Wyoming, to the United States Surveyor General——

The Master: That is sufficiently identified.

Mr. Sonosky: And a letter dated April 11, 1892——

Mr. Ellery: Just a moment. If I might——

Mr. Sonosky: They are both a part of the same exhibit.

Mr. Ellery: Oh, they are both a part of the same exhibit?

Mr. Sonosky: Yes. A letter dated April 11, 1892, from William A. Richards, United States Surveyor General for Wyoming, to the Commissioner of the General Land Office at Washington.

Mr. Ellery: Mr. Sonosky, in connection with the letter of April 11, 1892, which forms a part of your proposed Exhibit 7, under what issue in the pleadings is that letter offered?

Mr. Sonosky: Do you wish me to answer, Your Honor?

The Master: You might.

[fol. 113] Mr. Ellery: I only asked——

The Master: It is under Paragraph 5, I assume, is that true?

Mr. Sonosky: Paragraph No. 4, I think, is where it comes in—Paragraph No. 4 of the reply on Page 2.

Mr. Ellery: I think Your Honor indicated the thought it was an issue. We have no objection.

The Master: It will be admitted as Exhibit 7.

Mr. Sonosky: The plaintiff offers in Evidence Exhibit No. 8, so marked for identification, consisting of a contract and bond No. 247, of March 8, 1892, between the Surveyor General of the United States for Wyoming and Augustus L. Coleman. The contract is marked 8-A for identification and the bond is marked 8-B for identification, and 8-C for identification are special instructions dated March 11, 1892, to Augustus L. Coleman, United States Deputy Surveyor, Red Bank, Wyoming, from William A. Richards, United States Surveyor General.

Mr. Ellery: The defendants object to the introduction of the proposed exhibit on the ground and for the reason that under the pleadings the proposed exhibit and any of its material contents is admitted and no issue is joined as to any matter of fact appearing in any portion or part of the exhibit, and it would only tend to increase the record.

The Master: I believe I will overrule the objection for [fol. 114] this reason: That in the admissions and in the allegations concerning this, the special instructions were referred to, and I think it may be of some assistance, so it may be admitted and marked as Exhibit 8.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit 9, so marked for identification, a letter dated August 5, 1892, from William A. Richards, United States Surveyor General for Wyoming, to the Commissioner of the General Land Office.

The Master: Has the defendant any objection?

Mr. Ellery: We object to that on the ground and for the reason that any matters of fact shown by the proposed exhibit are admitted in the pleadings and that the admission of the exhibit would only encumber the record.

The Master: What have you to say as to that, Mr. Sonosky?

Mr. Sonosky: I think the encumbrance of the record——

The Master: No, as to the materiality of this exhibit, in view of the admissions?

Mr. Sonosky: Paragraph No. 6 of the answer alleges that the Surveyor General of the State of Wyoming advised the Commissioner of the General Land Office that Coleman had completed the survey covered by the contract and that the surveys were ready for examination in the field, and thereafter, on or about the 11th day of August, the Commis- [fol. 115] sioner of the General Land Office instructed the United States Surveyor General to make a personal inspection.

The Master: I am going to overrule the objection of the defendants.

Mr. Sonosky: And this shows the inspection——

Mr. Ellery: I might say, Your Honor, that the Government has alleged in Paragraph 6 all matter relative to this and we have specifically admitted everything that they allege.

The Master: I realize that. I just finished reading it. However, in Paragraph 6 of your answer and in Paragraph

6 of their reply reference is made to this and portions of it are pleaded, simply portions of the letter, and now I believe that the whole letter should be in evidence, and it will be admitted in evidence as Plaintiff's Exhibit 9.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 10, so marked for identification, a letter dated August 11, 1892, from the Acting Commissioner of the General Land Office to the United States Surveyor General, Cheyenne, Wyoming. That grants the request made by the Surveyor General in Government's Exhibit No. 9.

The Master: Any objection, Mr. Ellery?

Mr. Ellery: The same objection.

The Master: The objection to Plaintiff's Exhibit 10, for identification, will be sustained.

Mr. Sonosky: It seems to me, Your Honor, that to put [fol. 116] in 9 without 10 would make an incomplete picture.

The Master: As to Exhibit 10, it has been admitted that the Surveyor General was authorized. I might say, as I said before, that it will go into the record as for identification, but the reason I am passing on them at this time is purely on the question of an apportionment of costs.

Mr. Ellery: That is right. And I assume that Mr. Sonosky is making the request, in accordance with the Rules, that all excluded evidence be made a record to go up.

The Master: The Court must have it before it to determine whether my ruling is correct or not.

Mr. Ellery: Well, under the Federal Rules that only occurs upon a request.

The Master: It would not apply here. It will be sent up.

Mr. Ellery: Well, I don't care how it gets up there.

The Master: But, I say, the reason I am passing on it——

Mr. Ellery: That is the only purpose of the objection, Your Honor, is to try to put ourselves in the position where, if it is held that Your Honor properly excluded certain of these documents, the costs would not be a matter with which we would be concerned.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 11, so marked for identification, a letter [fol. 117] dated November 26, 1892, from the United States Surveyor General for Wyoming to the Commissioner of the General Land Office.

Mr. Ellery: That letter simply confirms the allegations of their Paragraph 6, which we admit.

Mr. Sonosky: This is on Paragraph 6 of the answer and Paragraph 6 of the reply, on Page 4.

Mr. Ellery: And we admit the facts are as you state in Paragraph 6 of your reply.

The Master: Do you make objection?

Mr. Everett: The same objection as previously made.

The Master: The objection will be sustained.

Mr. Sonosky: I want to direct Your Honor's attention to the fact that in the reply we allege the transmittal of a diagram showing the exterior lines of the survey, which is not alleged in the answer.

Mr. Ellery: We are admitting your Paragraph 6.

The Master: There is no issue on that.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 12, so marked for identification, consisting of a certified copy of Pages 30 to 36, inclusive, and Pages 10 to 13, inclusive, together with the cover page, the index page, numbered 595, and the index page numbered 640 and 641, and the page numbered 682, showing the approval, all in the field notes of survey of the exterior lines of [fol. 118] Townships 57, North of Ranges 100, 101, and 102, West, and Townships 58 North of Ranges 100 and 101 West.

The notes themselves show the exterior boundary of the south line of Township 58 North of Range 100, Pages 30-35, inclusive, and the east line of the same township, on Pages 10 and 12, together with the general description of the survey on Page 12.

Mr. Ellery: We will wait until Your Honor has examined it.

The Master: I assume that you have examined these field notes?

Mr. Ellery: We have tried to read them, Your Honor.

Mr. Sonosky: They are very clear.

Mr. Ellery: Of course, Paragraph 6 pleads the conclusion that was arrived at by the Department from those field notes, and it is pled in Paragraph 6 of the reply that the survey notes, "among other things, a diagram showing the exterior lines of a number of townships including said Township 58 and transcripts of field notes of surveys executed by Coleman," and so forth; and then in Paragraph 7 it is alleged that the Commissioner of the General Land

Office accepted those surveys; and we therefore object on the grounds heretofore stated.

The Master: In that connection, conclusions are pleaded. But I believe these field notes may go to the issue that the [fol. 119] Court will face here, and this may be admitted and marked Exhibit 12. I think, Mr. Ellery, in explanation——

Mr. Ellery: Well, we have no concern here except——

The Master: I think it may prove material.

Mr. Everett: I think it is all admitted by the pleadings, Your Honor.

Mr. Ellery: There may be some reason to refer to these notes. I appreciate that. I think Your Honor is probably correct.

Mr. Sonosky: I think, at some future date, we will all be happy with the record of these documents.

Mr. Ellery: Well, I won't, if we get assessed for costs.

Mr. Sonosky: The Government offers in evidence Exhibit No. 13, so marked for identification, represented to be part of the field notes accompanying the Surveyor General's letter of November 26, 1892, heretofore offered in evidence as Plaintiff's Exhibit No. 11, so marked for identification. The cover of the field notes identifies it as the 12th Guide Meridian and the 12th Auxiliary Meridian West through Townships 57 and 58 North, and contains Pages 4 to 9, inclusive, of the field notes, together with a page marked 591, showing the oath of the surveyors, and a page marked 593, showing approval by the United States Surveyor General.

The Master: Just in what respect is that different from [fol. 120] Exhibit 12?

Mr. Sonosky: These notes are the field notes of the west line of Township 58 North of Range 100 West.

Mr. Ellery: The same objection, Your Honor.

The Master: The objection will be overruled and it will be admitted as Plaintiff's Exhibit 13.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 14, so marked for identification, which is a certified copy of the field notes of the survey of the north boundary of Wyoming Territory, made in 1879 and 1880, showing that part of the notes which would mark the north exterior boundary of Township 58 North of Range 100 West. These field notes are not field notes made under Contract No. 247, but are filed notes of a survey made prior to

that time, and are offered in order that the Court may have a complete record of all of the notes covering all of the boundaries of Township 58.

Mr. Ellery: We object to that.

The Master: The objection will be sustained.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 15, so marked for identification, a certified photostat of the exterior lines of Townships 57 and 58, between Ranges 97 and 102 West, inclusive.

Mr. Ellery: Those are the exterior lines of the townships?

[fol. 121] Mr. Sonosky: It is a diagram of the exterior lines, and is marked as received with the Surveyor General's letter of November 26, 1892, heretofore offered in evidence as Plaintiff's Exhibit No. 11.

Mr. Ellery: We have no objection.

The Master: It will be admitted. Now, I understand that these are the exterior lines as shown on the Coleman survey?

Mr. Sonosky: Yes, that is the diagram——

The Master: And it is made from the Coleman survey?

Mr. Sonosky: This is a diagram of the exterior lines of the twelve townships covered by the Coleman survey under Contract No. 247.

The Master: It will be admitted and marked Exhibit 15.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit 16, so marked for identification, a certified copy of a plat of the survey subdividing into sections Township 57 North of Range 97 West, one of the plats received with the Surveyor General's letter of November 26, 1892, heretofore offered in evidence as Plaintiff's Exhibit No. 11 for identification.

Mr. Ellery: That is objected to, Your Honor, on the ground that it is a survey of a township not involved in this case at all.

The Master: Just what is it?

[fol. 122] Mr. Sonosky: The purpose of that exhibit and the next ten exhibits, which are also plats of a survey subdividing the township into sections under the same Coleman contract No. 247, is to show that only eleven plats subdividing the townships into sections were returned by Coleman, while his contract provided for the subdividing of twelve townships, and the twelfth township was Town-

ship 58 North of Range 100, and for that township no plat subdividing it into sections was returned.

Mr. Ellery: That is admitted.

The Master: That is admitted, and the objection to Exhibit 16 will be sustained. I think the Supreme Court knows how they subdivided these townships, and that they did survey them, and it is not necessary to introduce an exhibit to show that they are subdivided or whether he carried out his contract or not. We are only interested in Township 58.

Mr. Everett: I would say to the Court in that connection that as to Township 57-100, Township 57-99 and Township 58-99, that those township plats additionally identify and locate the Section 36 that is in controversy here.

Mr. Ellery: Those were admitted, weren't they?

The Court: If you have no objection to them, I will admit them.

Mr. Everett: We objected to this one, and we will object to all of those which he seeks to offer except those which [fol. 123] touch upon Section 36 in Township 58, Range 100 West.

Mr. Sonosky: As Your Honor will observe——

The Master: The ruling will be the same. I will confirm my ruling on Exhibit 16, and the objection will be sustained as to Exhibit 16.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit 17, so marked for identification, a plat of a survey into sections of Township 57 North of Range 98 West.

Mr. Ellery: The same objection, Your Honor.

The Master: The objection will be sustained.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 18, so marked for identification, being a certified copy of a plat of a survey subdividing into sections Township 57 North of Range 99 West.

Mr. Ellery: No objection.

The Master: It will be received.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit 19, so marked for identification, a certified copy of a plat subdividing partially into sections Township No. 57 North of Range 100 West.

Mr. Ellery: No objection.

The Master: It will be received as Exhibit 19.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 20, so marked for identification, a certi-

fied copy of a plat of a survey subdividing into sections [fol. 124] Township 57 North of Range 101 West.

Mr. Ellery: That is objected to on the ground that the survey plat would not tend——

The Master: The objection to Exhibit 20 will be sustained.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit 21, so marked for identification, being a certified copy of a plat of a survey subdividing into sections Township 57 North of Range 102 West.

Mr. Ellery: The same objection.

The Master: The objection will be sustained.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 22, so marked for identification, a certified copy of a plat of a survey subdividing into sections Township 58 North of Range 97 West.

Mr. Ellery: The same objection.

The Master: It will be sustained.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit 23, so marked for identification, being a certified copy of a plat of a survey subdividing into sections Township 58 North of Range 98 West.

Mr. Ellery: The same objection.

The Master: The objection will be sustained.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit 24, so marked for identification, being a certi- [fol. 125] fied copy of a plat of a survey subdividing into sections Township 58 North of Range 99 West.

Mr. Ellery: No objection.

The Master: It will be received as Exhibit 24.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 25, so marked for identification, being a certified copy of a plat of a survey subdividing into sections Township 58 North of Range 101 West.

Mr. Ellery: The same objection, ir elevant and immaterial to any matter involved.

The Master: The objection will be sustained.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 26, so marked for identification, being a certified copy of a plat of a survey subdividing into sections Township 58 North of Range 102 West.

Mr. Ellery: The same objection.

The Master: Sustained.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 27, so marked for identification, being a certified copy of a diagram of the examination of surveys under Contract No. 247, A. L. Coleman, with a line shown in red, "Examination by W. A. Richards, United States Surveyor General." This diagram was one of the documents shown as received with the letter dated November 26, 1892, from the Surveyor General of Wyoming, to the [fol. 126] General Land Office, heretofore offered in evidence as Plaintiff's Exhibit No. 11, so marked for identification.

Mr. Ellery: Under the suggestion of the Master that these surveys which do involve any lines of Section 36, Township 58, should be in evidence, we have no objection.

The Master: It will be received as Exhibit 27. Is this a good spot to stop?

Mr. Sonosky: I could finish this survey with about three more documents, and then we could stop.

The Master: All right, go ahead and finish that.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 28, so marked for identification, a letter dated December 20, 1892, from the Assistant Commisioner of the General Land Office to the United States Surveyor General at Cheyenne.

Mr. Ellery: If that is the letter accepting the surveys, we have no objection.

The Master: It will be received as Plaintiff's Exhibit 28.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 29, so marked for identification, being a certified copy of a certification that, on the account between Augustus L. Coleman and the United States, under Contract No. 247, there was payable to him the sum of $3,757.

The Master: It will be admitted.

[fol. 127] Mr. Ellery: Well,——

The Master: He has been paid.

Mr. Ellery: He has been paid. I don't think it is relevant, but my associate thinks it might be; so we do not have any objection.

The Master: It will be received and marked Plaintiff's Exhibit 29.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 30, so marked for identification, a letter dated July 15, 1893, from the United States Surveyor Gen-

eral for Wyoming to the Commissioner of the General Land Office.

Mr. Ellery: We object to that because it occurs after the vital time, which is the acceptance by the General Land Office of the survey.

The Master: What is the purpose?

Mr. Sonosky: The purpose of it is to give the Court a complete exposition of what happens to a survey in the General Land Office, and when a survey is a survey. Now, that letter——

Mr. Ellery: It is a question of law when a survey becomes an official survey.

The Master: Is there any pleading that covers this?

Mr. Sonosky: That letter requests permission to file the triplicate plat of the township in the District Registrar's office.

[fol. 128] The Master: Is it your position that that instrument pertains to the survey?

Mr. Sonosky: It is just for the purpose of presenting a full picture to the Court.

Mr. Ellery: That full picture is pretty expensive unless it is material.

The Master: The objection will be sustained.

Mr. Sonosky: I should add, not only to give a full picture to the Court, but in order to provide a basis in connection with a witness I propose to present to explain how these surveys were made, and what meanings these various notes, plats and diagrams have under the——

Mr. Ellery: That will be objected to when it is offered.

The Master: I have ruled on it.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 31, so marked for identification, a letter dated May 4, 1894, from the Acting Commissioner of the General Land Office to the United States Surveyor General for Wyoming.

Mr. Ellery: That is objected to as irrelevant and immaterial, being two years after the date of the approval of the exterior lines of the survey of Township 58.

The Master: Do you have the same purpose?

Mr. Sonosky: The same purpose.

The Master: The objection will be sustained.

Mr. Sonosky: I have one more, Your Honor: Plaintiff's [fol. 129] Exhibit No. 32, so marked for identification, consisting of Plaintiff's Exhibit 32-A, a letter dated May 5,

1894, from the Acting Commissioner of the General Land Office to the United States Surveyor General for Wyoming, and Plaintiff's Exhibit 32-B, a letter dated May 9, 1894, from the Acting Commissioner of the General Land Office to the United States Surveyor General for Wyoming.

Mr. Ellery: Same objection.

The Master: You do not contend that this in any way refers to land in controversy here?

Mr. Sonosky: No, Your Honor.

The Master: The objection will be sustained.

(Thereupon at 12:10 p. m., a recess was taken until 1:30 p. m.)

[fol. 130] Pursuant to recess, the hearing was resumed at the hour of 1:30 o'clock, p. m., September 11, 1945, whereupon the following proceedings were had:

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 33, so marked for identification, being a certified copy of a letter dated May 27, 1914, from the Northern Pacific Railway Company to the United States Surveyor General at Cheyenne, Wyoming.

Mr. Ellery: What is the date of that?

The Master: I understand, Mr. Sonosky, now you are taking up the question of the surveys as alleged in Paragraph 2 of the affirmative matter in your reply?

Mr. Sonosky: Yes, Your Honor.

The Master: Have you any objection?

Mr. Ellery: The only objection is that the State of Wyoming now admits, as they have admitted in the pleadings, as I understand them, that there was no subdivisional survey of Section 36, Township 58, approved until July 27, 1916.

Mr. Sonosky: That is quite a different thing from the allegations of the reply.

The Master: Will you read that Paragraph 2, on Page 5, of the reply?

Now, are you willing to admit that up to July 27, 1916? [fol. 131] The balance, Mr. Sonosky, is a conclusion, I believe, and that is what you want to establish?

Mr. Ellery: We will admit that a subdivisional survey of Section 36 of said Township 58 was authorized on July 14th, 1914, and that such survey was made, and that the notes of such survey were approved by the Commissioner of the General Land Office and that the plat of said sub-

divisional survey was accepted by the Commissioner of the General Land Office on July 27, 1916.

The Master: Is that sufficient, Mr. Sonosky?

Mr. Sonosky: No, Your Honor, that is something entirely different from what we allege. We are not alleging a subdivisional survey of Section 36, but we are alleging——

The Master: I will admit this, although——

Mr. Ellery: That is what I just got through admitting, that it was a subdivisional survey.

Mr. Sonosky: There, Your Honor, is a perfect example of going up on the pleadings. We allege that this is a survey, meaning it to be a survey of the exterior lines, and they admit it to be a subdivisional survey.

The Master: The exhibit which you offer now, doesn't it itself show that?

Mr. Sonosky: I don't quite follow Your Honor. Does the exhibit show what—a subdivisional survey of the township?

The Master: It says "a survey of the unsurveyed portion [fol. 132] of Township 58."

Mr. Ellery: May we make a record on this?

The Master: Yes.

Mr. Ellery: We wish to make a record that we object to the introduction of that exhibit on the ground and for the reason that it is not binding on the State of Wyoming, in so far as it makes any reference to these lands being unsurveyed.

The Master: It will be admitted solely for the purpose of showing the request for a survey, and it will be Exhibit 33.

Mr. Sonosky: Your Honor, it is offered for all purposes as stated therein.

The Master: Yes.

Mr. Everett: It is understood that the defendant The Ohio Oil Company, has the same objection, without renewing it each time?

The Master: Yes, that will be understood. Let's make it this way: Any objection made by either defendant is on behalf of both of them.

Mr. Sonosky: The Government offers Plaintiff's Exhibit No. 34, so marked for identification, a letter dated June 15, 1914, from the Northern Pacific Railway Company to the United States Surveyor General, Cheyenne, Wyoming.

Mr. Ellery: That is objected to on the ground it is irrelevant and immaterial to any issue in this case.

[fol. 133] The Master: The objection will be overruled and it will be received as Exhibit 34.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 35, so marked for identification, a letter dated June 17, 1914, from the United States Surveyor General for Wyoming to the Commissioner of the General Land Office.

Mr. Ellery: The same objection.

The Master: I can't see what value that letter would have. This may be leading up to it, but I don't know just what value it would have.

Mr. Sonosky: This is a record of the whole transaction, and to leave out one part of it might not give the Master and the Court a full understanding of this whole matter.

The Master: It may be received as Exhibit 35.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 36, so marked for identification, a letter dated June 30, 1914 from the Assistant Commissioner of the General Land Office to the United States Surveyor General for Wyoming.

Mr. Ellery: That is objected to as irrelevant and immaterial, being about twenty years beyond the vital time involved in this case.

The Master: The objection will be overruled and it will be received as Exhibit 36.

Mr. Sonosky: The Government offers in evidence Plain-
[fol. 134] tiff's Exhibit No. 37, including Exhibit 37-A, a certified copy of a letter dated July 20, 1914, from the United States Surveyor General to the Commissioner of the General Land Office, and an exhibit marked 37-B, being entitled "Supplemental Special Instructions," dated July 14, 1914, from the Surveyor General of Wyoming to Arthur D. Davis, United States Surveyor.

Mr. Ellery: That is objected to as irrelevant and immaterial under the admissions heretofore made by the State of Wyoming, that there was no approved subdivisional survey of any part of Township 58 or of any part of Section 36 prior to July 27, 1916.

The Master: Mr. Sonosky, these are not offered for the purpose of showing any of the facts stated in these letters, but simply for the purpose of showing the steps taken in connection with this survey? I am speaking of this letter in particular.

Mr. Sonosky: It is for the purpose of showing that instructions were issued by the General Land Office to the Surveyor, and what the instructions were, as a preliminary step to the ultimate survey.

The Master: Simply a preliminary step? In other words, as stated in these letters, as to any question of fact, it is your position that the Court should consider those facts as evidence of those matters, and that these letters are proof of any fact, except as to the——

[fol. 135] Mr. Sonosky: I don't know that there are any such statements in these exhibits, but I regard these exhibits as a necessary part of the Government's theory of the case from which we can argue our concept of the law, and we are putting them in to demonstrate exactly what took place in the preliminary steps leading up to a survey of this section.

The Master: But not as evidence of any of the facts stated in them? Because they wouldn't be considered as testimony. It is just leading up to the survey?

Mr. Sonosky: That's right.

The Master: What is this number?

Mr. Sonosky: That is Exhibit 37-A and 37-B.

The Master: You may proceed.

Mr. Sonosky: Is that admitted, Your Honor?

The Master: Yes, they may be admitted and marked as Exhibit 37.

Mr. Everett: That is, with the qualification that Your Honor placed on it?

The Master: Oh, yes.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 38, so marked for identification, a certified copy of a letter dated July 21, 1914, from the Supervisor of Surveys of the Department of Interior to the Commissioner of the General Land Office.

Mr. Ellery: That is objected to on the same ground.

[fol. 136] The Master: The objection will be sustained. It goes to no issue at all. I am not going to encumber the record with all of these inter-departmental communications concerning the survey.

Mr. Ellery: We want it distinctly understood, Your Honor, that we object to any of the matter in there as being in any way binding or proving anything at all.

The Master: I understand that.

Mr. Ellery: Because it is nothing more than inter-office communications between the plaintiff's agencies.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 39, so marked for identification, a certified copy of a letter dated July 29, 1914, from the Assistant Commissioner of the General Land Office to the United States Surveyor General, Cheyenne, Wyoming.

Mr. Ellery: Same objection.

The Master: The objection will be sustained.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 40, so marked for identification, a certified copy of a letter dated December 9, 1915, from the United States Surveyor General for Wyoming to the Commissioner of the General Land Office. This is a transmittal of the return of the survey.

Mr. Ellery: Same objection.

The Master: The objection will be overruled, and it will [fol. 137] be admitted as Exhibit No. 40.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 41, so marked for identification, being a certified copy of the field notes of the survey of the south boundary of Township 58, shown on Pages 31 to 35, inclusive, of the notes executed by Arthur D. Davis, United States Transit Man, in a survey commenced July 7, 1914, and completed August 24, 1914.

Mr. Ellery: Same objection.

The Master: It will be received and admitted as Exhibit No. 41.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 42, so marked for identification, being a certified copy of Pages 25 to 28 of the field notes of the survey of the east line of Township 58 North of Range 100 West.

The Master: To make the record correct, it is marked "Resurvey."

Mr. Ellery: That was a resurvey.

The Master: A resurvey of part of the southeast boundary of Township 58, Range 100 West.

Mr. Ellery: We object to the introduction of that——

The Master: I point that out simply for the record, to make it agree. That is Exhibit 42, is it?

Mr. Sonosky: Exhibit 42.

Mr. Ellery: We have the same objection.

[fol. 138] The Master: It will be received. The objection is overruled and the exhibit received as Exhibit No. 42.

Mr. Sonosky: Plaintiff offers in evidence Exhibit No. 43, so marked for identification, being a certified copy of the field notes of a survey of the 12th Guide Meridian West through Townships 58 North, between Ranges 100 and 101 West, which would be the West line of Township 58 North of Range 100 West.

Mr. Ellery: The same objection, and on the further ground that this particular exhibit does not touch any part of Township 58.

The Master: It will be received, as Exhibit No. 43.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 44, so marked for identification, being a certified copy of the field notes of the dependent resurvey of the Montana-Wyoming boundary line, from the 102 to the 109 mile post, which would be the north line of Township 58 North of Range 100 West, and a survey of the subdivision lines of Township 58 North of Range 100 West.

Mr. Ellery: Same objection.

The Master: It will be received and marked Exhibit 44.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 45, so marked for identification, being a plat of fractional township 58 North of Range 100 West, representing a plat of the survey of Township 58 North of [fol. 139] Range 100 West into Sections.

Mr. Everett: I understand this exhibit is certified as coming from the General Land Office in Washington. This does not purport to be a copy of the plat in the local Land Office.

Mr. Sonosky: No. That is a copy of the original plat on file in the General Land Office in Washington.

Mr. Everett: Well, I note there is some difference here. We want to object, of course, on the same ground we have objected to the rest of these. I have before me a plat from the local Land Office, and without going further with it at this time, this plat, which was certified in 1929, has the word "School" written across the Section 36 in controversy, and bears certificate dated December 14, 1929, signed by the Register of the United States Land Office, in which it is stated, in part, "That the attached is a true copy of the original plat of survey of Township 58 North, Range 100 West, filed in the United States Land Office, Lander, Wyoming, October 2, 1916, and the original plat is now

a part of the records of the Cheyenne, Wyoming, Land Office, of which records I am custodian.

The Master: The original is offered, or a copy of it.

Mr. Sonosky: It is a certified copy of the original on file in Washington.

(Conference.)

[fol. 140] The Master: I am going to receive it. It will be admitted as Exhibit 45.

Mr. Sonosky: As a matter of fact, I expect to have present the Register of the Local Land Office, and we will show you the originals as they are in his office.

Mr. O'Marr: As they are today.

Mr. Sonosky: As they are today, in his office. Is it admitted?

The Master: The objection will be overruled, and it will be admitted.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 46, so marked for identification, being a certified copy of a plat showing the subdivision into sections as made by Surveyor Davis in 1914, of Township 57 North of Range 100 West.

Mr. Ellery: The same objection.

The Master: The objection will be sustained.

Mr. Sonosky: The reason, Your Honor, we consider this pertinent is because Your Honor will note that the east two and a half miles of Township 57 North of Range 100 West, that portion of the township surveyed into sections for the first time in 1914, also affected the common line of the south line of Township 58, Range 100, and the common line of the south line of Section 36, in controversy; so this is very material. The two townships lie one above the [fol. 141] other, and they are both——

The Master: We have the plat of the township in question here, and it shows that.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 47, so marked for identification, being a certified copy of a letter dated July 27, 1916, from the Assistant Commissioner of the General Land Office to the Surveyor General. That is the letter that accepts the survey.

The Master: Yes.

Mr. Ellery: We have no objection.

The Master: It will be received and marked Exhibit 47.

Mr. Ellery: That is the one thing we think is relevant.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit No. 48, so marked for identification, being a certified copy of a letter dated August 24, 1916, from the Assistant Commissioner of the General Land Office to the Surveyor General for Wyoming, transmitting copies of the plat for use as duplicate and triplicate plats, and the triplicate plat is the one to which counsel just referred with respect to this.

Mr. Ellery: Same objection.

The Master: The objection will be overruled and the exhibit received as Plaintiff's Exhibit No. 48. It is after the date of the approval, but it closes up the gap.

Mr. Ellery: I want the record to clearly show that under [fol. 142] our theory, these matters are not relevant.

Mr. Sonosky: At this time I will call Mr. Wilbur S. Wills. Your Honor, I have here some diagrams of townships which may be helpful.

The Master: I have them, thank you.

WILBUR S. WILLS, called as a witness herein on behalf of the plaintiff, being first duly sworn according to law, on his oath testified as follows:

Direct examination.

By Mr. Sonosky:

Q. Your name is Wilbur S. Wills?

A. Yes, sir.

Q. And your age, please?

A. Fifty-six.

Q. What is your present position, Mr. Wills?

A. Chief, Survey Division, General Land Office, United States Department of the Interior, Washington D. C.

Q. As Chief of the Division of Surveys, what are your duties?

A. We have the custody of the plat and field note records of the General Land Office, and review returns of surveys prior to acceptance, and examine those that require detailed examination, and recommend to the Assistant Commissioner those which should be accepted, and prepare letters setting [fol. 143] forth any further corrective action which may be

required for any surveys which may be found not to have been properly executed in accordance with the Government laws and the Manual of Instructions for the Survey of Public Lands.

Q. I understand that you review and make recommendations to the Commissioner of the General Land Office as to the approval or disapproval of surveys of public lands.

A. I do.

Q. And in reviewing those surveys, what matters do you consider?

A. As to whether the survey has been executed as required by law and the Manual of Surveying Instructions and any special instructions which may have been issued and approved by the Commissioner of the General Land Office, whether it is responsive to the authorization and accomplished the purposes for which it was authorized.

Q. And that entails a working knowledge of the regulations of the General Land Office governing the survey of public lands and the laws governing the survey of public lands?

A. It does.

Q. What are your regulations called?

A. The Manual of Instructions for the Survey of the Public Lands of the United States.

Q. How long have you been in your present position as [fol. 144] Chief?

A. As Chief of the Division, since June, 1945.

Q. And before that, you were the Assistant Chief?

A. I was Assistant Chief from March, 1942.

Q. And as Assistant Chief, did you do substantially the same work that you do now as Chief?

A. Substantially, in the absence of the Chief, I perform the same duties as Acting Chief.

Q. Now, in the period since you have been assistant chief and Chief of the Division of Surveys, you have reviewed the surveys and resurveys of about how many acres of land?

Mr. Ellery: We will admit his qualifications, if that is important at all.

Mr. Sonosky: I would prefer to put that in the record, Your Honor.

The Master: I don't know that he is here as an expert witness or just what he is on for. These are preliminary questions, so go ahead.

A. The number of survey returns examined would average between three hundred and four hundred a year, representing approximately between three and four million acres of surveys and resurveys per year.

Q. And before you were Assistant Chief, what was your position?

A. I was Cadastral Engineer in the Division of Surveys [fol. 145] of the General Land Office.

Q. In Washington?

A. In Washington, D. C.

Q. How long did you occupy that position?

A. From 1926 to my appointment as Assistant Chief.

Q. I understand that a Cadastral Engineer does the initial review work before it is passed on to the Assistant Chief or the Chief of the Division of Surveys?

A. That is correct.

Q. Have you had any practical experience as a surveyor?

A. Yes.

Q. Tell us about that.

A. I started in the General Land Office in May, 1907, as a field assistant and passed through the various grades of chain man and axe man and as principal assistant and temporary transit man. In 1911, after passing the Civil Service examination, I was given a permanent appointment as United States Surveyor, and continued from 1911 until 1926, when I went to Washington and was detailed to the office of the Division of Surveys.

Q. Then, you were a United States Surveyor from 1911 to 1926?

A. That is correct.

Q. What are the duties of a United States Surveyor?

A. As chief of party to execute surveys and resurveys of [fol. 146] public lands of the United States under the direction of the Commissioner of the General Land Office.

Q. So that you actually were chief of parties for the survey of public lands from 1911 to 1926?

A. That is right.

Q. Can you give us an estimate of how many acres were surveyed and resurveyed by parties of which you were chief during that period?

A. In that period of time, the average survey in the more difficult surveys of the mountainous country would take perhaps a full season, but in the prairie countries of Nebraska and Eastern Wyoming, we would survey and

resurvey as many as four townships in a month. I would say that in that period approximately three million acres were surveyed and resurveyed.

Q. In what states did you conduct surveys of public lands?

A. In Idaho, Oregon, Washington, California, Montana, Nebraska and South Dakota.

Q. And those included surveys of flat lands as well as rough, broken mountainous country?

A. It did.

Q. Did you attend an engineering school?

A. Yes.

Q. Tell us about that.

A. After graduating from high school in New York City, [fol. 147] I attended Cooper Union, pursuing a course leading to the degree of Bachelor of Science in Civil Engineering, but I left school to enter the employ of the Government shortly before graduation and did not receive a degree.

Q. As I understand, you completed three and a half years of a four-year course?

A. A little more than three and a half years of a four-year course.

Q. And you were an associate member of the American Association of Civil Engineers?

A. I was.

Q. Now, Mr. Wills, have you examined Contract No. 247 between the United States Surveyor General and Augustus L. Coleman?

A. I have.

Q. Will you tell us how many townships he was directed to survey under that?

Mr. Ellery: That is objected to as irrelevant and immaterial, and not the best evidence, and the instrument speaks for itself.

The Master: The objection will be sustained.

Q. Have you examined the plats, diagrams and field notes transmitted with the return of the survey made under Contract No. 247 with Augustus L. Coleman?

A. I have.

[fol. 148] Q. Now, from your examination of those plats, diagrams and field notes, can you state what actually was surveyed by Coleman under his Contract No. 247?

Mr. Ellery: Just a moment. That is objected to on the same ground, that it is irrelevant and immaterial, and not the best evidence, and the action of the Commisioner in 1892 settled and determined what Coleman surveyed.

The Master: I think the exhibits speak for themselves. The objection will be sustained.

Mr. Sonosky: Your Honor, the thought occurred to the Government that, while the exhibits in a sense speak for themselves, they are fairly technical documents and are not such documents the fine points of which can be immediately discerned by an ordinary practitioner, or even by an experienced practitioner, who is not familiar with the surveys of public lands. This witness is an expert, and he is here to render what aid is possible to both sides in explaining what these things mean.

The Master: The objection will be sustained.

Q. Tell us what was surveyed, Mr. Wills.

Mr. Ellery: Just a moment. That is objected to on the same ground exactly. These instruments were put in for two hours this morning and they speak for themselves.

The Master: The objection will be sustained.

Mr. Sonosky: The Government will offer to prove by this witness that under the Coleman Survey No. 247, there [fol. 149] was surveyed the exterior lines of twelve townships, numbers 57 and 58 between Ranges 97 to 102 West, inclusive, and there was subdivided into sections wholly ten townships, and there was subdivided into sections partially one township, namely, Township 57 North of Range 100 West, and that Township 58 North of Range 100 West was not subdivided into sections.

Mr. Ellery: We object to the offer on the ground and for the reason that the exhibit which Your Honor admitted in evidence this morning proved the offer.

The Master: The objection will be sustained.

Q. Mr. Wills, I direct your attention to Plaintiff's Exhibits 16, so marked for identification; 17, so marked for identification; 18, in evidence; 19, in evidence; 20, for identification; 21, for identification; 22, for identification; 23, for identification; 24, in evidence; 25, for identification; and 26, for identification, which were plats transmitted with the letter of the Surveyor General of November 26, 1892, Government's Exhibit No. 11, so marked for identification.

Now, you have examined the originals of those plats in Washington?

A. I have.

Q. And how many plats are on file in Washington as the returns made with the returns of the Coleman survey showing the subdivisional lines of the townships?

Mr. Ellery: That is objected to as irrelevant and imma-
[fol. 150] terial.

The Master: The objection will be sustained. In the examination of a witness only those exhibits which have been admitted in evidence should be used.

Q. Now, Mr. Wills, what rules governed the survey of public lands in 1890?

Mr. Ellery: That is objected to as not the best evidence, and that the matter of what rules governed surveys in 1890 or 1892 depends upon the laws of the United States in effect at that time, and the regulations of the Department at that time, and the Court takes judicial notice of both of those matters.

The Master: This is an effort to prove by this witness the regulations in effect at that time?

Mr. Sonosky: One thing that should be cleared up, Your Honor, is that the contract between the Surveyor General and Coleman makes that a part of the contract, the Manual of Survey Instructions for 1891, and we intend to show by this witness that there is no Manual of Survey Instructions for 1891; that the only manual in force before that was the manual for 1890, and that "1891" was a clerical error.

The Master: If that is the sole purpose——

Mr. Ellery: Well, we will admit that.

Mr. Sonosky: All right.

Q. Do you have handy your copy of the Manual of In-
[fol. 151] structions for 1890?

A. I do.

Q. Will you get it, please?

A. Yes.

Mr. Sonosky: Your Honor, perhaps I ought to explain in advance what I propose to do with this expert on public surveys. I propose to bring to Your Honor's attention those portions of the regulations in force and effect which would deal with the Coleman Survey, and the purpose is simply to aid the Master and the Court when it comes to

consider the effect of the survey of the exterior lines of the township, in respect to whether it does or does not constitute a survey of what would be Section 36 within that township.

The Master: As I understand it—and if I am wrong, correct me—those regulations will come to our judicial notice?

Mr. Sonosky: That is right.

The Master: Well, any part of it that you desire to bring to the attention of the Court, you may do so in your argument and in your briefs. It is not necessary to put an expert witness on any more than to put on an expert lawyer.

Mr. Sonosky: Except that we are dealing with survey instructions, and I feel that a surveyor could better explain those than a lawyer.

Mr. Ellery: The Court has to construe them anyhow.

The Master: You will have the advantage of his assist- [fol. 152] ance in your argument. I do not believe it is proper testimony.

Mr. Sonosky: I should like to leave with the Master and have made a part of the record the copy of the Manual for 1890. There are very few copies available.

The Master: That would be of some assistance, if available, in connection with your briefs.

Mr. Sonosky: Then we understand that we can make reference to that in the argument and in the briefs?

The Master: Yes, that is all right. It is a part of the law of the case.

Q. Now, Mr. Willis, have you examined the field notes returned with the 1892 survey?

A. I have.

Q. From your examination of those field notes of the survey of the exterior lines of Township 58, can you state whether the surveyor fixed his monument at forty chains for a quarter section and eighty chains for a sectional corner?

Mr. Ellery: That is objected to on the same grounds as I have objected, because those notes and the plat of the Coleman survey are here and the Court can determine that for itself.

The Master: The objection is sustained.

Q. From your examination of those notes and of the special instructions governing surveys then in force, will

[fol. 153] you explain the reason for fixing the monuments at each forty and eighty chains in surveying the exterior lines of a township?

Mr. Ellery: That is objected to as immaterial and irrelevant, and not proper. That is a matter for the Court, and of which the Court takes judicial notice, under many opinions of the United States Supreme Court in discussing the rectangular system of survey. I do not think anybody can explain it any better than Judge VanDevanter. We do not think it is proper to take up time with that sort of evidence.

The Master: What have you to say to that?

Mr. Sonosky: If you will take the plat of the exterior lines of Township 58 North, 100 West, you will see marked at every forty and eighty chains the corner. Did it occur to you why they were put there? Do you know why they are there?

The Witness: May I have the question read?

(Last question read.)

A. They are, of course, required by the regulations and the law,——

Mr. Ellery: I move that the answer be stricken out.

Mr. Sonosky: He has not finished his answer.

The Master: Let him finish his answer.

A. —and they would serve for future subdivision of a township, if found to be within the allowable limits as prescribed by the regulations; otherwise, they are subject to [fol. 154] correction.

Q. Now, what do you mean by "allowable limits"?

The Master: They are the allowable limits prescribed in the regulations, aren't they?

The Witness: Yes, sir, that is right.

Mr. Ellery: We raise the same objection——

The Master: The objection will be sustained. It may be helpful, but I think you are going further than you should be permitted to.

Q. Now, the plat in evidence shows that the east two and a half miles of Township 57 North of Range 100 West was not surveyed into sections in 1892, and that Township 58 North of Range 100 West was not surveyed into sections in 1892. Now, will you please state whether the common bound-

ary between townships 57 and 58, Range 100 for two and a half miles west from the common east corner of the two townships was subject to rectification under the 1890 manual?

Mr. Ellery: That is objected to as not the best evidence, The manual speaks for itself.

The Master: The objection will be sustained.

Q. I direct your attention to Plaintiff's Exhibit No. 27, which is an examination of the surveys under the contract of Richards. Will you explain the purpose of the Richards' examination and the meaning of those red lines?

Mr. Ellery: That is objected to on the ground that this [fol. 155] witness, almost fifty years after Mr. Richards indicated his purpose, cannot now testify to any other different purpose than is expressed in the instrument signed by the Surveyor General of Wyoming in 1892.

The Master: I am going to hear the testimony. It will be subject to a motion to strike, perhaps.

A. This diagram is of the sort that was furnished to the surveyor who was authorized to examine a contract. The purpose of the examination of a contract was to test by actually running the specified percentage of the lines in the field to ascertain if a contractor had properly performed his duties and if the surveys were acceptable. The red lines indicate the actual lines that the Surveyor General Richards re-traced, that is, that he re-measured, and ran the line with an instrument in the field.

The Master: In other words, something like an audit. You pick out certain lines and run them?

The Witness: Yes, Your Honor. And this shows the lines which were surveyed, which were to be examined, and left it to the discretion of the examiner, with the requirement that he do his work to test the accuracy of the work. It shows the lines that Surveyor General Richards actually examined, the lines that had been surveyed; that he could pick his first ten per cent, and if he found it out of limits, examine an additional ten per cent, until he accepted or [fol. 156] rejected the contract.

Q. I direct your attention to Plaintiff's Exhibit No. 15, which is a diagram of the exterior lines of the townships

covered by the Coleman contract in 1892. Will you please explain to the Court the purpose of that diagram?

Mr. Ellery: That is objected to as irrelevant and immaterial, and this diagram speaks for itself, on the exterior lines of certain townships.

The Master: This reduces the survey and the field notes to a diagram?

Mr. Sonosky: The diagram has a purpose which is entirely unrelated to the survey and the field notes. This man is prepared to explain it, and he is prepared to explain the difference between that diagram and those plats.

The Master: I do not believe that you are permitted to go behind this certificate: "I hereby certify that the paper hereto attached is a photographic copy of the plat of survey of the lands to which it relates, on file in this office and in my custody, namely, the 14th Standard Parallel North Range 97, 98, 99, 100 and 101 West," and so forth. It describes it all and is strictly conformable to the field notes and the survey thereof, which has been examined and approved.

Mr. Sonosky: That is correct, Your Honor. The question, I believe, is what was the purpose of the diagram.

[fol. 157] Mr. Ellery: What difference does it make?

Mr. Sonosky: The difference it makes is that the purpose of the diagram——

The Master: We want to get along. I will permit him to answer, to see what it is. You may answer.

A. The diagram serves two principal purposes. One was that in the event another surveyor would be required to subdivide the townships, of which this diagram represents the exterior lines, this information would be furnished in diagram form to the subdividing deputy. The second purpose was to facilitate the accounting and payment of the contract, under the contract system then in effect. The diagram designates the different classes of lines, and the mileage, and they were payable at different rates.

The Master: But the diagram was made and was certified strictly in conformity with the survey?

The Witness: Oh, yes. And that is furnished to the deputy with his official data that he can use for his further

subdivision, unless, under the regulations, he found them out of limits.

Q. Now, you have examined the field notes and plat of the Arthur Davis survey, approved in 1916, of Township 58, North of Range 100 West?

A. I have.

Q. Will you please explain what that surveyor did in [fol. 158] the 1916 survey, as shown by his plats and field notes, with reference to the exterior lines of Township 58 North of Range 100 West?

Mr. Ellery: That is objected to, on the ground and for the reason that the instruments speak for themselves and are in evidence.

The Master: The objection will be sustained.

Mr. Sonosky: Well, at this time, Your Honor, the Government would like to make an offer of proof, to show that this witness, in response to that question, would testify that Davis re-traced the four exterior lines of Township 58.

The Master: Just before you go into that, Mr. Sonosky, where would this witness get the information from which he testified?

Mr. Sonosky: From the field notes.

The Master: From the field notes, and they are all in evidence. That is, all of the information you are asking him to testify to is already in evidence. The danger of this sort of examination is that certain things which might be wholly improper might get into evidence. The construction of these things is a matter for the Court to decide, and in the examination of this witness on that you are invading the province of the Court. It is not a question for expert testimony at all.

Mr. Sonosky: Your Honor understands, of course, that [fol. 159] the only purpose in offering this——

The Master: Yes, I know.

Mr. Sonosky: He has nothing to say that is intended to aid the Government case any more than it would aid the defendants' case. He is purely a practical and scientific expert on the question of surveys. But, in view of Your Honor's position, we are willing to withdraw the witness.

The Master: All right. If there is any other question—and he has been of assistance to us, and please don't get that wrong—but there are certain fundamental rules of evidence

that we cannot vary here. Very often a Judge could use the assistance of an expert psychiatrist and other experts——

Mr. Sonosky: That is true.

The Master: But it is his job to construe these instruments and the documents that are in evidence, and very often you will find that the courts, and the Court that I represent here, will disagree with experts in their own lines.

Mr. Sonosky: Yes, that is true, and the Court will probably hear what Mr. Wills might testify to through the mouths of the attorneys for the Government.

That is all, Mr. Wills.

(Whereupon, the witness was excused.)

[fol. 160] The Master: I think, before you call the next witness, it would be a good time to take a ten-minute recess.

(Whereupon, at the hour of 2:45 o'clock, p. m., a recess was taken.)

The Master: Call your next witness.

Mr. Sonosky: At this time, Your Honor, I am somewhat in a state of doubt as to where we stand in this lawsuit. Of course, we had come out originally contemplating the usual course of events, that the defendants would put on their case, and we had not anticipated the pleasant surprise that the defendants gave us yesterday, and then we had anticipated that the accounting feature would come on in regular order, and we had planned accordingly.

Now, the next witness that I propose to call is the Deputy Register of the District Land Office at Cheyenne, who has brought his original records with him, and some of his testimony may relate to the survey, but a good deal of it would arise in connection with the accounting, and he would testify with respect to the recordation dates, and similar facts, and the orders of withdrawal, and things of that kind, which would serve to give notice to the defendants as to the status of the title of record.

Now, if there is going to be some division of that part of the case which can be broken off and separated, this wit-[fol. 161] ness would not fit here now. Otherwise, this testimony would fit right in.

Mr. Ellery: If Your Honor please, I would like to clarify our position again on this accounting proposition. As I have indicated heretofore, the defendants feel that the

accounting phase of this case is entirely incidental and dependent upon what is done with the case on the merits, and that, while we are quite ready to cooperate with the Government and with the Master in any way in which we can simplify that matter, we made a little further search, and we find this Gulf Refining Company against the United States case, which, unless the Master is familiar with it, I think he should consider on the proposition of breaking this case cleanly and distinctly between the primary and the incidental issues.

The Master: I agree that that should be done and all evidence as to title should be in before we go into any accounting, but I don't follow you as to just what feature of the accounting case this would involve. I don't understand that.

Mr. Sonosky: The Government has sued here to recover the value of oil production. The Government has proved, to its own satisfaction, at least, the title in the United States. That is the theory of our case. If title is in the United States, then The Ohio Oil Company is a trespasser, and if The Ohio Oil Company is a trespasser, then the [fol. 162] measure of damages, as laid down in the Woodenware case, to which the United States is entitled is the value of the production extracted. The courts have gone further and said, "But if the trespasser is innocent, then he is entitled, the trespasser is entitled, to deduct the costs of producing." I am not trying to state exactly the rule, but generally that is the rule. So, the question arises whether the trespass is willful or innocent. There is no need for the Government to allege in its complaint that it is a willful trespass, because it wouldn't mean anything, because "willful" is a conclusion of law. It is enough that we prove it is a trespasser, and we are prepared, at your pleasure, to submit the authorities on the proposition that when we prove a man is a trespasser, if he wants the benefit of the ruel of damages that I mentioned, he must prove that he is within the scope of the rule, and to that extent the burden is on him.

Now, in this case we haven't reached that point, simply because the defendants did not go forward with that portion of the case, and in the ordinary course of events that should have been established. If they are there in good faith, they should have established that by putting in evidence the record, and then, in the course of the rebuttal we would

have put in our evidence to prove, or undertake to prove, that they were not there in good faith either for all of the period or for part of the period.

[fol. 163] The Master: Now, the purpose of this testimony that you are about to offer is what? The specific purpose of that testimony is what—to show notice?

Mr. Sonosky: The questions to be directed to the witness, I should say, largely will deal with dates of the recordation of these instruments of record here in Cheyenne in the Register's office, showing public notice.

The Master: What instruments have you in mind—those that were offered yesterday?

Mr. Sonosky: The order of withdrawal, for example—the order withdrawing these lands as a part of Petroleum Reserve No. 41.

The Master: Well, right there, isn't there constructive notice to all parties, including the defendants, when that proclamation of withdrawal was signed?

Mr. Sonosky: Yes, there is constructive notice, but I think it adds something to show that that proclamation was here on file in the local office. It is constructive notice, just as there is constructive notice of any act of Congress.

The Master: Yes, that is true.

Mr. Sonosky: But when you are dealing with willful trespass, anything that you can bring closer home to show knowledge on the part of the defendants is stronger than if you simply show constructive notice.

The Master: You may call your witness.

[fol. 164] Mr. Ellery: If I may take a little time on that, because that is important to us to keep the case in its two divisions in an orderly way, and right at this time, all we want to direct Your Honor's attention to is the proposition that we are now trying the case on the merits of the title, and that we feel we have a good reason to object to the interjection into the case on the merits any evidence that might come out on the accounting which may be made up later.

Now, as far as the comment on the burden of proof is concerned, Your Honor's suggestions yesterday are interesting, and we checked up, and we feel quite confident that under the state of the pleadings in this case Your Honor's indicated present thought as to who should go forward is correct, because under the Government's pleading they allege that the State of Wyoming has and is now claiming

title to the lands, and an action is brought by the United States to quiet that asserted title or to establish that the asserted title of the State of Wyoming is not good. They then plead specifically that for many years Wyoming has granted oil and gas leases to The Ohio Oil Company, who has for many years been in possession, operating the lands under those leases.

Now, on the pleadings alone, there is sufficient in the case to rebut and meet any presumption, and Judge Sanborn has held—I am probably submitting this a little too soon, and I will confine it to a very brief statement—but [fol. 165] Judge Sanborn has held that if there is nothing in the evidence but the evidence of trespass, there will be a presumption. They start off with a presumption, and if there is nothing else in the case, he says, "The evidence offered by the plaintiff, or the defendant, may meet that presumption and overcome the presumption, so that the burden then is upon the plaintiff to go forward and show bad faith." They plead that Wyoming through a period of years executed leases to The Ohio Oil Company and that The Ohio Oil Company has been in possession under those leases. Now, the presumption is that the officers of the State of Wyoming acted honestly and in good faith when they issued those leases.

The Master: I think now is the time to hear that. I agree with that. That is my thought. However, I am going to hear from the other counsel.

Mr. Ellery: I have just one further thought that I would like to unburden myself of, because——

Mr. Sonosky: I would like the citation of the case that you quoted from, if you please, Mr. Ellery.

Mr. Ellery: I haven't quoted anything yet. If you want Judge Sanborn's opinions, I will be glad to give them to you.

The Master: Pardon me, but if both counsel are ready to argue that question at this time, I think now is perhaps as good a time as any to hear it.

[fol. 166] Mr. Sonosky: The question of who has the burden of proof?

The Master: It isn't so much the question of the burden of proof, because, after this case is submitted and the facts are submitted, I will determine just where the burden lies and who has that burden and who has met it. But my present thought, as I pointed out to you, is that under the Gov-

ernment's pleading there is a presumption of good faith in the transactions of The Ohio Oil Company and the State of Wyoming and the execution of this lease and their possession of this property.

Now, you advised me last evening that you had authorities to the contrary, and that is what I would like to hear from you on, and then I will hear from Mr. Ellery in answer to that.

Mr. Sonosky: All right.

The Master: Now, before you proceed, gentlemen, there is one thing. I understand that in your daily transcript of the proceedings you want all of the argument taken, but it is not necessary that all of this argument go into the original record to the Supreme Court.

Mr. Ellery: No, as I understand it, we are not concerned in having any of this argument taken.

The Master: If the reporter takes the argument, it is for use of the attorneys here in connection with the trial [fol. 167] in the daily transcript.

Mr. Ellery: I think we should have it made a part of the daily transcript.

Mr. Sonosky: I want to be clear as to one thing, whether I am limited just to this single question of who must go forward with the evidence in proving good faith or bad faith?

The Master: Let's put it this way, that it is my opinion now that the matter of bad faith is not in this case at all, and that there is nothing in the pleadings that would justify the Court in hearing testimony that would tend to prove bad faith on the part of the State of Wyoming or The Ohio Oil Company.

Mr. Sonosky: You mean that when the United States prays for judgment for the value of the production, and the defendant answers that the defendant The Ohio Oil Company has lost a hundred and sixty thousand dollars, or some such sum, in connection with their operations on Section 36, that that ends the matter?

The Master: Yes.

Mr. Sonosky: Then, I am afraid I am lost, because it occurs to me that we start out with a complaint in which we ask for a decree that the Government recover the full value of all oil, gas and other petroleum products, and they come back with an answer in which they allege that they [fol. 168] went in on this land in good faith, and then, if

the Court should find that the Government is the owner, then, on any accounting they are entitled to all proper expenditures and costs of operation incurred in the production of the oil and gas. Now, their allegation of good faith there stands denied by our reply.

The Master: There is a general denial.

Mr. Sonosky: Yes, and we deny that they are entitled to those expenditures. Now, there is the issue. The issue is joined right there. Your Honor is to take an accounting. Let us assume that we are all in agreement as to the amount of the expenditures. Let us start with capital expenditures. and we are agreed, let us say, that The Ohio Oil Company has expended X dollars in capital expenditures on Section 36. The Government will then object on the ground that The Ohio Oil Company is a willful trespasser and is not entitled to deduct capital expenditures.

The Master: Yes, but there are allegations in your complaint that the State of Wyoming is claiming this land under color of right and has entered into leases with The Ohio Oil Company and The Ohio Oil Company is in possession under that lease. Now, what I want to know——

Mr. Sonosky: We don't say the State of Wyoming is claiming under any color of right, but we have no argument with the State of Wyoming as far as good faith is concerned, because that does not arise in connection with the [fol. 169] accounting. As to the defendant The Ohio Oil Company——

The Master: Let's get this right. The State of Wyoming claims some right, title or interest in said land adverse to the United States. That is your allegation.

Mr. Sonosky: That is correct.

The Master: Now, if the State of Wyoming is in possession under a claim of right, is it a willful trespasser?

Mr. Sonosky: Under those facts, I should say no.

The Master: The Ohio Oil Company is in possession under the State of Wyoming and put into possession by the State of Wyoming.

Mr. Sonosky: Yes.

The Master: Under a claim of right.

Mr. Sonosky: You mean, if the landlord has no title, the tenant is excused?

The Master: No, if the landlord has a claim of title——

Mr. Sonosky: Or if the landlord has a color of title?

The Master: Yes, or a claim of title, then, he is not a willful trespasser, is he?

Mr. Sonosky: Then the tenant is excused, although he has full knowledge——

The Master: Of the claim of the Government?

Mr. Sonosky: Of the claim of the true owner.

The Master: That is what I want to hear from you on. You said you had authorities on that. How do you distin-[fol. 170] guish this from the California Oil Company case? There is the same situation exactly.

Mr. Sonosky: That is the Standard Oil Company of California, which was cited here yesterday.

The Master: Yes, the Standard Oil Company of California against the United States.

Mr. Sonosky: The first distinction would be that that was controlled by the State Statute, and that decision was governed by the statute of California.

The Master: Some of the states have statutes on them and some of them have no statutes, but the general rule seems to be, as was said here——

Mr. Sonosky: No, I think that that was not a correct statement, Your Honor, because, where the statute of a state lays down the measure of damages, they can make any distinction they wish, but in the absence of a statute we are relegated to the common law rule, which prevails in the State of Wyoming.

Mr. Ellery: What's that? It just happens, Mr. Sonosky, that we have a Supreme Court rule which announces——

The Master: Just a moment, please, Mr. Ellery. What is your contention as to the rule in the State of Wyoming?

Mr. Sonosky: It seems to me—I am not sure that I followed you all the way, but the Government sees it this way: We own a piece of land, and somebody went onto our land and took out some oil, and they went in there claim-[fol. 171] ing a right to be on there under a lease from somebody else who claimed to be the owner——

The Master: With your full knowledge?

Mr. Sonosky: Oh, no, that is not there. How can we charge full knowledge to the United States? By what process can that be done?

The Master: But they were in possession since 1917.

Mr. Sonosky: We can demonstrate cases where they were in possession for seventy-five years, and there is no way of charging them with knowledge.

The Master: Eliminate that, then.

Mr. Sonosky: It is as if I owned a house, and John Doe comes along and says, "I am the owner of the house. I have got a deed for it," and he rents it to a tenant, and the tenant goes into my house, and I bring an action against the tenant for damages, is it a defense to him that he is there under a landlord who claims title? The only question is, who is the owner of the land and who is the trespasser on the land?

The Master: In the case of a trespasser against you, as you mention, I am not so sure but what you are right, but what I am interested in is your authority for the statement that all you have to show is that they are in possession before the burden is on them to show that they are in there innocently.

[fol. 172] Mr. Sonosky: All right. Now, the general rule on that proposition you will find stated in Summers' Oil and Gas, in Section 23, Page 34, in which he says that one who takes oil and gas from the land of another wrongfully is presumed to be a willful trespasser and suffers in damages as such. This presumption, however, is rebuttable and may be overcome by evidence showing that the defendant acted in good faith, honestly believing his acts complained of were privileged. Now, that means that when the true owner comes along and charges someone in possession with trespass, the trespasser has the burden of establishing that his trespass is not willful and that he is there bona fide under a claim of title or any other evidence to show good faith.

The Master: Isn't that an admitted fact in this case, that The Ohio Oil Company is on there under a lease from the State of Wyoming, and claiming title to that property, that they own it?

Mr. Sonosky: The allegation of the complaint is that the defendant claims some right, title or interest in the section under an oil or gas lease from the State of Wyoming.

The Master: And just previous to that, you allege the State of Wyoming claims ownership.

Mr. Sonosky: Previously we said that the State of Wyoming claims ownership. Now, if we would accept, for the

purpose of argument, Your Honor's view of that all it would [fol. 173] serve to them would be to establish a rebuttable presumption that they are there under a claim of good faith, and it would then move the burden of going forward with evidence onto the Government to show that their possession was not in good faith. That is a rebuttable presumption, and there is nothing in the complaint that says that The Ohio Oil Company went on there in good faith and is there in good faith. Now, they have been on there for many years, and during the course of years the question of good faith can change. They may have gone on in good faith and stayed on in bad faith.

The Master: Have you any case where you had an analogous or similar situation, where they have denied recovery? Maybe I can make myself clear to you. I have tried to.

Mr. Sonosky: The case of Guffey vs. Smith, Your Honor, is a case on that point. That is 237 U. S. 101. It was there held that a lessee could not deduct for the cost of the improvements and operations incurred prior to the date that the lessee had actual knowledge of the rights of the true owner—I mean, subsequent to the date that he had actual knowledge of the true owner—even though, in that case, it should be fairly pointed out that the lessee had constructive notice before that time. That was a case where the lease was recorded—the lease of the true lessee was recorded—and the company went to their abstractor to get an abstract [fol. 174] of title on that piece of land, and the abstractor by mistake left out the recorded lease, so, while the lease was actually on record, they didn't know about it, although they in good faith tried to find out about it through their abstractor, and the Court held that for that period when they didn't know about it, even though the lease was on record, they were entitled to deduct, but after the true owner came along and informed him of his right, that ended it.

The Master: What claim did he—I imagine it was Guffy—have? On what did he base his right to possession?

Mr. Sonosky: A lease from a true owner—one claim under a lease from a true owner, and one claim under a lease from one who was not a true owner. I think Your Honor is looking for a case where the owner claims to be the owner of the land sues the lessee, claiming under another who asserts to be the owner of the land.

The Master: Similar to that.

Mr. Sonosky: I think that situation is this one. I think that is the only way that could probably arise. But I did not have Your Honor's question in my mind when I said I was prepared to argue it. I thought you had in mind the burden of proof. We will be prepared to argue that tomorrow. There is no use in taking up Your Honor's time now.

The Master: You said you wanted to be heard on a question——

[fol. 175] Mr. Ellery: I think we might as well make ourselves very clear on this.

The Master: Give me your citations so that I may have an opportunity to look into it.

Mr. Ellery: We might as well make ourselves very clear on this issue at this time, both on the proposition that there should be at least a distinct and separate trial on the merits and a separate and distinct proceeding on the accounting, and we will at this time comment on what we believe is the burden of proof on the accounting matter when we come to it. We will indicate to Your Honor our views on that.

Now, first on the proposition that there should be a distinct and separate handling of the merits and any accounting that might be made——

The Master: I agree with you on that, and I think we are all agreed on it.

Mr. Ellery: Well, I will use this case on the trial, and then on the other point. In the Gulf Refining Company of Louisiana vs. the United States—is Your Honor familiar with it?

The Master: Give me the citation, please.

Mr. Ellery: That is 269 U. S., 125. The Court said, "The suits were brought by the United States to have its title to certain tracts of land confirmed, its possession thereof restored, and defendants enjoined from setting up claims thereto."

[fol. 176] Now, they are right on the nose, so to speak.

"In addition, the Government prayed for an accounting in respect of the oil and gas removed from the lands by the defendants.

"We held that the suits primarily involved the question of title to the lands and their protection against continuing trespasses, to which the accounting was incidental and dependent. And that the causes of action being, therefore,

essentially local, the measure of damages to be allowed," and so forth.

These cases were referred to a Master, who found the primary issues in favor of the Government, and made an accounting to January 1, 1918.

Now, that case is similar to this, in that the claim of the alleged trespasser was a claim made under his interpretation of his rights at law, on a question of whether he made a mistake of fact or not, and whether or not he misconceived his title, and in 1918 the Master took the account down to January 1, 1918.

At that time the suit was brought, and long before that the claim of the plaintiff had been asserted against the defendants in the case, and they finally got around to file suit, and the Master found title in the Government and took the accounting down to January 1. Appeals were taken, and the plaintiff stayed in possession and continued to [fol. 177] operate, and when the merits of the case were finally determined, it was some years after, and another accounting was ordered, and at that time the Government contended that the assertion of good faith of title that had been made by the defendants certainly could not exist beyond the filing of the suit by the United States against them; and they satisfied the Master that that ought to be the rule, and the Master refused to give them any credit for cost or development of production. In other words, applying the harsh common law rule to that; and the Supreme Court, in holding that where a party, as a matter of law—that is, determines that he has title under a certain legal situation, or a certain state of facts, he asserts title, that notice to him that somebody else thinks that they have a better title, does not require him to just quit and not make any defense of his asserted title.

The Supreme Court said: "The decision of the Circuit Court of Appeals seems to have proceeded from the standpoint that one who continues in possession of lands, originally taken in good faith, after judgment against him, may not have the advantage of the good faith of his original entry to enable him to offset his expenditures against the value of the oil extracted after judgment pending proceedings on appeal. Whether, thus stated, this is an accurate view of the law, we need not stop to inquire, since we are not here dealing with the common law doctrine in respect of

[fol. 178] trespassers in good faith, but with the case of persons who knew all the facts from the beginning, and who in the light of those facts, upon common law principles, were possessors in legal bad faith, but in moral good faith. The adjudication of the trial court added nothing to their knowledge of these facts. It simply informed them that the conclusion in respect of their rights which they had drawn from the facts was erroneous, a conclusion with the knowledge of which they must be charged from the beginning, since legally, though not morally, they were conclusively bound to know the law even before it had been declared by the court. The moral quality of their possession was not affected by the institution of the Government's suit, or the resistance which they interposed before judgment to the Government's contentions. And how can it be said that the moral quality of that possession was altered by the entry of the decrees? for non constat that they would not turn out on appeal to be wrong. An appeal is not a new suit in the appellate court, but a continuation of the suit in the court below, or, as this court has recently said, 'a proceeding in the original cause, and the suit is pending until the appeal is disposed of.' "

And the Supreme Court held that they were entitled to credit for their development and costs right down to the time that the Supreme Court entered the final order.

Now, I will just refer to Judge Sanborn's decision that [fol. 179] I mentioned a moment ago.

The Master: What is the citation?

Mr. Ellery: Of the Sanborn case?

The Master: Yes.

Mr. Ellery: The first one is 117 Fed., 481.

The Master: Give me the title of the case, please.

Mr. Ellery: The title is the United States vs. Homestake Mining Company, 117 Fed., 481. That is not in the memorandum that we submitted.

The Master: Go ahead with that.

Mr. Ellery: It is a very brief statement:

"It is conceded that the taking of the timber from the land of the United States raised the presumption of fact that it was willfully and intentionally taken. But this is only a disputable presumption of fact, which the evidence may so completely overcome," and so forth.

That is the exact statement that Mr. Sonosky has been contending for and, standing alone, might justify various inferences, and so forth.

I might say that in this case it appeared "that the plaintiff had alleged in its complaint that the defendant had willfully, knowingly, and without any permit or authority from the Secretary of the Interior," and so forth.

But in a later case, the case of Resurrection Goldmining Company vs. Fortune Gold Mining Company, 129 Fed., 668, [fol. 180] Judge Sanborn held:

"The wrongful taking of the ore, in the absence of all other evidence, raises a presumption of fact that the trespasser took it intentionally and willfully."

So, now, we have Judge Sanborn who has laid the rule down that if there is nothing in the case but a factual trespass which has been held wrongful, and nothing is proved or is brought before the Court except that there was a trespass, then that presumption might exist, but he says:

"This presumption, however, is a disputable one, which evidence may so completely overcome that it will become the duty of the Court to instruct the jury that it cannot prevail. The trespasser may overcome it, and may limit the recovery against him to the lower measure of damages, by proof presented on behalf of the owner, or on his own behalf"—In other words, Judge Sanborn holds that if the plaintiff's case contains any element from which an inference could be made of good faith, or absence of bad faith, then the presumption is made and is overcome, and the burden is upon the plaintiff to proceed.

Now, here the plaintiff alleges—and I think the situation is exactly as it was in the Gulf Refining case—the Government there commenced an action and alleged that the defendants had claimed title and they wanted the claim of the Government quieted.

[fol. 181] Now, Paragraph 4 of the complaint alleges:

"The State of Wyoming claims some right, title or interest in said land adverse to the United States.

Paragraph 5: "The defendant The Ohio Oil Company claims some right, title, or interest in said Section 36 under an oil and gas lease or leases granted to it by the State of Wyoming, and now is and for many years last past has

been in the actual possession of said Section 36 actively engaged in the production of gas, oil, and other petroleum products therefrom."

Now, right in the face of the complaint, they have established as a part of this case that Wyoming claimed title, granted leases to The Ohio, and that The Ohio thereby, under any law I ever heard of, acquired color of title which, on the face of it, meets any inference of bad faith, if they had color of title and went in there under the lease of Wyoming.

Now, Mr. Sonosky admits that he does not charge the State of Wyoming with bad faith. All right. He does not charge the State of Wyoming with bad faith. Well, then, the State of Wyoming, its officials acting honestly and in good faith, executed leases to The Ohio, and The Ohio took those leases granted by a sovereign, and under their own complaint went upon the lands and have been in possession of them for years.

[fol. 182] Now, I think under the state of the pleadings the situation is covered by Judge Sanborn's opinion. In other words, there is something here other than mere trespass. The situations are analogous. The pleadings show without any question a contention on the part of Wyoming from 1892 that they were the owners of Section 36. And the Government serves a notice on us, in 1929, and says, "You are not any longer the owner. There wasn't a subdivisional survey of this approved prior to a petroleum withdrawal."

The theory of the Government apparently is that when they served that notice on that claim out of their interior department, we had nothing to do but just quit, and that we are in bad faith because we continued from 1920 down to the filing of this lawsuit, and they are contending now that our title isn't good.

The Master: Are you familiar with this case?

Mr. Sonosky: That case arose in Louisiana, did it not, Your Honor?

The Master: Yes.

Mr. Sonosky: That arises under a State statute providing for moral good faith. It is a different thing than we have here.

The Master: What rule of law on the question of damages do you contend applies to this case?

Mr. Sonosky: The general rule of damages is that a [fol. 183] trespasser is liable for the value of the oil.

The Master: I mean specifically the rule that you say it is the duty of the Supreme Court to apply in this case. Of course, this hearing is being held in the State of Wyoming, and it could have been held any place, of course, but what rule of damages do you contend applies here?

Mr. Sonosky: That the trespasser, if a willful trespasser, is liable for the value of the production of all the oil produced on the land; that the trespasser, if innocent, is entitled to certain deductions, and as to which of those deductions it is entitled to, there is a conflict of authority in the cases themselves, which Your Honor will have to resolve.

The Master: All right. Now, does not your allegation, under this decision of the Supreme Court, negative any bad faith or willfulness?

Mr. Sonosky: I regard that case in the same class as the Mason case with which Your Honor is no doubt familiar. The Mason case is the forerunner of that case.

The Master: Where is the rule of damages? Frankly, here is my thought: While it is true that this is the first time I have had experience with trespass on oil lands, in my jurisdiction we have treble damages for the removal of timber,——

Mr. Sonosky: That is right. We are familiar with that.

The Master: It is the invariable rule that they are [fol. 184] permitted to recover treble damages.

Mr. Sonosky: That is right.

The Master: But the allegations themselves under the claim of right negative bad faith. If that is the case, what is the issue on that?

Mr. Sonosky: You are dealing with statutory measure of damages.

The Master: Whether you are or not, what difference does it make?

Mr. Sonosky: In the absence of a statute, we would not be entitled to treble damages——

The Master: But you admit that if they were not trespassers they would be entitled to the oil.

Mr. Sonosky: If they were not trespassers they would be entitled to some offsets.

The Master: Have you any authority that they would be a willful trespasser under a claim of right?

Mr. Sonosky: They may go in under a claim of right and be an innocent trespasser, and subsequently discover the true condition.

The Master: But here the Supreme Court said it makes no difference if there is an adjudication that the Government owns the property.

Mr. Sonosky: They were there applying the Louisiana statute, were they not?

[fol. 185] The Master: No; the measure of damages, but not the statute.

Mr. Sonosky: But the statute itself is the measure of damages and deals with moral good faith.

The Master: That is the Louisiana law that they were applying—the Louisiana measure of damages.

Mr. Sonosky: Which deals with moral good faith. "Moral good faith" are the words of the Louisiana statute.

The Master: Well, unless you can show me some authority for your position, I am going to sustain the objection to any testimony that goes to bad faith, because, in my opinion, you have negatived bad faith by the allegations of your complaint. And as to notice, this testimony is wholly immaterial. But my opinion is subject to change if you can show me some authority. That is why I advised you last evening that that was my opinion.

Mr. Sonosky: I did not understand your thought last evening. I understand it today. But referring to the Mason case on the measure of damages under the Louisiana law, the Court specifically said there—and this is the language of the Court—"Whether the defendants were innocent trespassers within the principles of the common law, we find it unnecessary to determine."

They strictly applied the Louisiana statute. That read that the fruits produced belonged to the owners, although they may have been produced by the work and labor of a [fol. 186] third person, and the owner's reimbursing such person his expenses, and with that broad statute before them and the moral good faith provision in it, they had no difficulty in that case; but they first cleared away the proposition that they were dealing with principles of common law.

The Master: What is the difference between the rule of civil law under the Louisiana statute and the common rule as you have enunciated it?

Mr. Sonosky: One deals with moral good faith, and one deals with legal good faith. Now, a man may be in legal bad faith and still be in moral good faith.

The Master: I have made research on that. I have not only had the advantage of briefs that were submitted, but I have made research. Now, I am very much interested in having authority on your point.

Mr. Sonosky: We will try to get it for you. We did not understand from your request that we were to respond in any way to the——

The Master: No, but I wanted to make it quite clear, and I think the record will show that I said that unless there was something that you had changed my opinion, I wouldn't receive it.

Mr. Sonosky: In order that the record may be clear, if the Master finally takes that position——

The Master: I said, "It seems to me that it was the [fol. 187] duty of the Government to so charge, and, in the absence of any affirmative charge of bad faith, the Special Master is of the present opinion that he will not hear testimony as to that; that he will not hear testimony that goes to the question of bad faith."

Mr. Sonosky: Well, assuming that you continue with that same opinion,——

The Master: If you have any authority for your position, I shall be glad to listen to it.

Mr. Sonosky: We will undertake to bring it to you, and assuming that you take the same position, the Government, of course, will be permitted to make an offer of proof.

The Master: Yes. You may proceed.

Mr. Sonosky: I have the Register here, Your Honor.

The Master: You may call him.

Fred J. Peterson, called as a witness herein on behalf of the plaintiff, being first duly sworn according to law, on his oath testified as follows:

Direct examination.

By Mr. Sonosky:

Q. Your name is Fred J. Peterson?

A. Yes, sir.

Q. You are the Deputy Register of the District Land [fol. 188] Office at Cheyenne?

A. Yes, sir.

Q. You are also the Acting Register of the District Land Office, in the absence of the Register?

A. Yes, sir.

Q. Do you have charge, under the supervision of the Register, of the District Land Office at Cheyenne?

A. Yes, sir.

Q. And you have charge or supervision of the records in that office?

A. Yes, sir.

Q. Are Townships 57 and 58 North of Range 97 to 102 West within the land district under your jurisdiction?

A. Yes, sir.

Q. Are the public land records relating to those townships on file in the District Land Office at Cheyenne?

A. Yes.

Q. At the request of Government counsel, did you examine and search the records of your office to ascertain what plat or plats show the survey of those townships just mentioned into sections?

A. Yes, sir.

Mr. Everett: Mr. Sonosky, if all you wish to prove by this witness is the date of the filing of the plats in the Local Land Office, we will agree to it.

[fol. 189] Mr. Sonosky: We also want to prove by this witness that after making a search of all the plat books and tract books and letter files and any diagrams or plats of townships, that there isn't on file in the Land Office here a diagram showing the exterior lines of Townships 57 and 58 North of Ranges 97 to 102 West which is the same as the diagram introduced this morning, Plaintiff's Exhibit 15.

Mr. Everett: I do not think it would be material.

Mr. Sonosky: I just asked you if you will admit that. If not, I will ask the witness.

Mr. Everett: Well, if you think it is material, but I do not see any theory in the case on which it might be material.

The Master: Go ahead.

Mr. Sonosky: Will you read the question?

(Last question read.)

A. Yes.

Q. And at the request of Government counsel, did you search the records of your office to ascertain what diagram or diagrams showing a survey of the exterior lines of each of those sections were on file?

A. Yes.

Q. When did you make that search?

A. About two or three weeks ago.

Q. Tell us just what search you made when you made it.

[fol. 190] Mr. Everett: I object to that. I don't think that is material. It is wholly immaterial and irrelevant.

The Master: I will sustain the objection.

Q. What plats of townships 57 and 58 North of Ranges 97 to 102 West, showing subdivision of those townships into sections, did you find on file?

A. I didn't find any except the original township plats.

Q. Did you find a township plat for each one of those townships?

A. Yes, sir.

Q. Did you find a plat of Township 57 North of Range 100 West?

A. Yes, sir.

Q. How many plats did you find on file for that?

A. One.

Q. Wasn't there a plat on file for that in 1892 and one in 1916?

The Master: What is it you want, specifically?

Mr. Sonosky: I just want—the only other one was a partial survey made in 1892.

A. I have one plat here of 57-100. There may be others, but that isn't what I was supposed to bring. I was supposed to bring 58-100, but not 57.

Q. You only have one of 57 with you?

A. Only one plat of all townships except 58, of which I [fol. 191] have more than one.

Q. How many plats of 58-100 do you have?

A. I have three. Three of 58-100.

Q. Now, give us the dates on which those plats were prepared and the dates on which they were recorded in your office.

A. This was filed in the Local Land Office at Lander October 2, 1916.

Mr. Sonosky: The witness is referring to a plat of Township 58 North of Range 100 West of the Sixth Principal Meridian, showing a survey of the township subdividing it into sections.

Q. What is the other plat that you have?

A. These are some new ones.

Mr. Sonosky: The witness is referring to two supplemental plats, one dated as received May 16, 1944.

(Conference.)

The Witness: This was accepted April 21, 1944, or sometime before April 10, 1944.

The Master: Now, I want to get that for my own information. Does that mean that there have been three surveys since the original survey of exterior lines?

The Witness: This is the original plat. That is the only plat on that.

Mr. Sonosky: The witness is referring to a plat of fractional townships 58-100, showing the subdivision of the [fol. 192] township into sections. Now, I want to identify that for the record.

The Master: Identify all of them. We have a copy of that.

Mr. Sonosky: Yes.

The Master: Let the record show that the plat that the witness was referring to is the original of——

Mr. Sonosky: Referred to as the triplicate copy.

The Master: Yes. It is Exhibit No. 45.

(Conference.)

Mr. Everett: We move that any reference to the two supplemental plats which the witness has referred to as being received May 16, 1944, be stricken from the record.

Mr. Sonosky: The Government agrees to that. The two supplemental plats have no relation whatever to the issues.

The Master: They will be stricken, and all reference to them.

I want to inquire a little about that, because I am interested in clearing this up. Would the fact that there were two additional plats after the survey in 1916 indicate that there had been two resurveys of that?

The Witness: These plats were made for one purpose, I think, to locate these oil wells.

By Mr. Sonosky:

Q. In other words these were just diagrams?

[fol. 193] A. Yes.

Q. They are not plats?

A. They are not plats.

Q. I direct your attention to Section 36 shown on the triplicate plat on file in your office, of Township 58 North of Range 100 West. Does that have any statement on it showing school land?

A. No, it does not.

The Master: I desire counsel to interrogate the witness and bring out that point.

Mr. Everett: Do you want Government counsel to interrogate the witness or do you want me to take him on cross-examination?

The Master: I don't care who does it, or I will do it myself. I am interested in having in the record some evidence from some source that shows when the word "school" was eliminated from Section 36 on the plat.

Mr. Sonosky: Your Honor, I don't think it was eliminated. I think the same writing is there now that was on there before.

By Mr. Sonosky:

Q. Mr. Peterson, how long have you been in the office in Cheyenne?

A. Since 1919, in February.

Q. So you were not there at the time this was filed, this plat was filed, on October 2nd, 1916?

[fol. 194] A. No, these plats were filed in the Lander office, the office at Lander, Wyoming, and brought to Cheyenne.

Q. Will you explain the reason why the word "School" appears on the photostat of this plat made on December 14th, 1929?

A. No, I couldn't.

Q. Have you any practice or custom to mark the word "School" on Section 36?

A. No, sir.

Q. Is the word "School" marked on any other plats showing Section 36 in it?

A. Oh, yes, a lot of them.

Q. Have you any there that are so marked?

A. I couldn't tell you. It is their system up there to mark "School" on there, and some of them they do and some of them they don't.

Q. A minute ago you said it was the practice or custom. I am just wondering if you could explain why that word "School" appears in Section 36.

A. I couldn't say. It may be that the Lander Office put that in there.

Q. Did you ever write that word in any plats in your office?

A. Not on the original plats—16 and 36.

Q. Here is a plat here that shows Township 57 North of [fol. 195] Range 102 West, and here is the word "School" plainly written on Section 36.

A. Yes, sir. That has that on there. They all have that.

Q. Who wrote that on there?

A. Somebody in the Lander office years ago.

Q. That was the practice of the Lander office?

A. It could be in any office, for all I know, but our practice is that 16 and 36 is school land, regardless of whether you say "School" or not. That is understood.

Q. And the word, where it was written on the original plats brought from the Lander office, it was written on there in pencil?

A. That is correct.

Q. Do you have any others with you?

A. This says "School."

The Master: The record will show that the witness is referring to other plats, to other township plats.

The Witness: And this one don't show it.

Q. This was brought from the Lander office?

A. They are all plats from the same locality. Here is another one.

Q. Can you distinguish any writing on Section 36?

A. I wouldn't swear what it is.

Q. Is that in pencil?

[fol. 196] A. That is in pencil.

Q. Does it appear to have been erased?

A. It looks like that disappeared.

Q. Does it look like it has been erased or worn out?

A. No, I wouldn't say. I would say it was worn out.

Mr. Sonosky: If Your Honor is under the impression that this has been erased, I would have the necessary examination made to determine that fact.

Mr. Everett: It doesn't make any difference to me. It is dim, and that is all that is important to me.

Mr. Sonosky: No.

The Master: I am curious as to why a photostatic copy that the company has shows the word "School" while the photostatic copy that was introduced in evidence in this case doesn't show it, and I am also interested in whether or not, if we go into this question of notice, whether that word was erased on those records.

The Witness: Do you have a glass? I can tell with a glass. The man that put that on there put that on others, and they all look alike.

Mr. Sonosky: Are you confused as to why that word does not appear on the certified copy that the Government introduced in evidence this morning?

The Master: Of course, we realize that your certified copy was taken from some other record.

[fol. 197] Mr. Sonosky: Yes, the General Land Office in Washington, and it is not on there. Your question is simply as to the certified copy shown by counsel?

The Master: That's it, and apparently a certified copy, or a photostatic copy, of a public record of the Lander Land Office——

Mr. Ellery: That is the only one that really is public.

The Master: That is the only one that afforded any notice to the parties in this case.

Mr. Sonosky: Not the only record.

The Master: Well, one of them.

Mr. Sonosky: Yes, one of the records.

The Master: Well, make it "one of the records."

Mr. Sonosky: Maybe our expert on surveying may be able to throw some light on that tomorrow.

By Mr. Sonosky:

Q. From your search of the records, did you find on file in your office a diagram of the exterior lines of Townships 57 and 58 North of Ranges 97 to 102 West?

A. No.

Mr. Everett: We object, Your Honor. It is immaterial whether he found them or not.

The Master: He has answered, so I will let the answer stand. It is immaterial, of course.

Mr. Sonosky: It is material only as to the survey, of course.

[fol. 198] Q. Did you check your records to find out whether there was filed, and, if so, the date it was filed, among the records of your office the Presidential Order withdrawing lands for Petroleum Reserve No. 41, dated December 6, 1915?

A. Yes.

Q. What is the date of that recording?

Mr. Everett: I object to that, Your Honor. Didn't you already introduce in evidence yesterday the sheet from the Land Office that showed that that Petroleum Withdrawal was recorded?

Mr. Sonosky: Is that in evidence?

The Master: Yes, I think so.

Mr. Sonosky: The date of the recordation is not on there, Your Honor.

The Master: I will permit him to answer.

Q. The entry was made, but can you give the date that it was recorded?

A. You mean the date when it was entered?

Q. When was it recorded and filed for record in your office?

A. December 6, 1915.

Q. No, that is the date of the instrument.

A. I couldn't tell you what date they put it on there.

Q. Do you have a record showing the date these are recorded—showing the date that the withdrawal of lands [fol. 199] for Petroleum Reserve No. 41 was recorded?

A. I couldn't do that from the tract book.

Q. Do you have a record in your office that will show the date that was recorded? Do you have a record in your office showing the date that the Presidential Order withdrawing land for Petroleum Reserve No. 41 was placed on record in your office?

A. I couldn't tell you unless I looked through the old files and find that letter, if it is still there, from 1915, of the Lander record.

The Master: The only record you would have in your office that is open to the public is the record that you are looking at now?

The Witness: These two right here.

The Master: And the record you are looking at now is Plaintiff's Exhibit 6?

The Witness: Yes.

By Mr. Sonosky:

Q. Mr. Peterson, do the records in your office reflect whether or not any entries under the Public Land Laws of the United States were made on Township 58 North of Range 100 West prior to December 6, 1915?

A. In the entire township?

Q. Section 36.

A. No entries in Section 36 prior to 1915. The first entry in there was made in 1910. That was the coal withdrawal. [fol. 200] Q. That was the coal withdrawal?

A. Yes.

Q. Were there any entries under the land laws?

A. No.

Q. Was the land open for entry?

Mr. Everett: Now, we object to that, Your Honor.

Mr. Sonosky: All right, I will withdraw that.

The Master: That calls for a legal conclusion.

Mr. Ellery: My, that was dynamite, Mr. Sonosky.

Q. Can you tell us when the first entries were made, Mr. Peterson?

Mr. Everett: We object to that as wholly immaterial.

A. Homestead entries?

Mr. Everett: It is already shown by the record here.

The Master: The only record is Exhibit 6, which he testified to, so the objection will be sustained.

Mr. Sonosky: I withdrew the question, Your Honor.

Q. Now, Mr. Peterson, I am going to show you again your triplicate plat in your office of Township 58, Range 100 West, and direct your attention to the notation in red reading "Petroleum Reserve No. 41. Wyoming No. 16. Executive Order, December 6, 1915. Telegram, December 6, 1915." Now, there is a capital "N" and "December 9,

1915," and then, following that, "Township 58, Range 100, unsurveyed"——

Mr. Everett: Are you testifying, or the witness, here?

[fol. 201] The Master: I think he is calling attention to that.

Mr. Everett: All right.

Q. (Continuing) —and, following that, is a series of descriptions of lands, including "Section 36, all." When was that notation placed on there?

The Master: If you know.

A. That notation was placed on there along in 1928 sometime, after the Lander records came down here. All of these Lander records did not have all of the notations on there at all, so we completed the job after that. That work should have been done by them twenty years before, but it wasn't done, so I wrote that on there——

Q. You wrote that on there?

A. I wrote that on there sometime after July 1st, 1927, when we had time. We transcribed the records and completed them as we had time. That was on the tract book, you will notice. The party who put that on the record put it on in 1915. There is the first notation.

Q. Mr. Peterson, when you say "this" and "that," we don't know what you mean. Let's clear this up, first. Now, this was put on by you sometime in 1928?

A. I couldn't say that, b it it was sometime after July 1st, 1927.

Q. What was the latest?

A. We kept on working for two or three years.

[fol. 202] Q. What was the latest, would you say?

A. I would say four years after that when we quit working on them.

Q. When the records came down to you from the Lander office, did it have anything in the tract book that showed the entry of the petroleum withdrawal?

A. This petroleum withdrawal in 36——

Mr. Everett: If Your Honor please, again, I think, these matters all speak for themselves. Here is the tract book already introduced in evidence.

The Master: Isn't that the document you are now refering to, and isn't that already in evidence, or a copy of it?

Mr. Sonosky: A copy of it. We are trying to show the date of recordation, if we can.

The Master: It speaks for itself, and there is no date on it.

Mr. Everett: He has already testified he doesn't know when it was entered.

Q. Are those entries made in regular order in your tract book.

A. What do you mean by "regular order"? They are put on there when they are filed, and they might be any place, scattered all through that section.

Q. You don't make any entries above any entry?

A. We make them all over this space at any time.

[fol. 203] Q. When an entry is made in a book and a new entry is made, you may put it on the line below?

A. As a rule.

Q. Did you ever make it on the line above?

A. Yes, sir.

Q. What type of entry do you make——

Mr. Everett: Now, Your Honor, we object to that.

Mr. Sonosky: I will withdraw that. No further questions.

The Master: Will your cross examination be long?

Mr. Everett: Not long, Your Honor.

The Master: Go ahead.

Cross-examination.

By Mr. Everett:

Q. Mr. Peterson, I hand you a certified copy of a township plat of Township 58 North, Range 100 West, signed by Mr. Christensen, the Register of the Land Office at Cheyenne, dated December 14th, 1929, and on the back of the document is a certificate, which is undated, which says—"I do hereby certify that the photostatic reproduction on the reverse side of this sheet is a true and correct copy of our plat showing fractional township plat of No. 58 North, Range 100 West, Sixth P. M., Wyoming," and signed by Mr. Christensen, the Register, and then on the front of the certificate it says, in part, that the records were transferred [fol. 204] from Lander to Cheyenne on July 1st, 1927, and that "the attached is a true copy of the original plat of the original survey of Township 58 North of Range 100 West,

filed in the United States Land Office, Lander, Wyoming, October 2, 1916, and which original plat is now a part of the records of the Cheyenne, Wyoming, Land Office, of which records I am custodian," and call your attention, in connection with that and the plat which you have testified about here on direct examination, on the photostatic copy which was certified to on December 14, 1929, the word "School" appears. Did you find that on the original plat?

A. If I had a glass I could tell whether it is on here.

(The witness examines the document in question with a glass.) It was there at one time. It is faint.

Q. It is faint?

A. It is very faint.

Q. You were in the office in 1929, were you, on December 14th, 1929?

A. Yes, sir.

Q. And, having seen the photostat which I have shown you as being certified, would you say that that word was on there as of that date?

A. Yes, I would.

Mr. Everett: No further questions.

The Master: Any further questions?

[fol. 205] Redirect examination.

By Mr. Sonosky:

Q. Does it have the appearance of having been erased or just having become faint with time?

A. I believe I can tell you why it disappeared in part.

Q. Go ahead, if you can.

A. This part of this 36 is a structure, and when this structure was put on here by the Land Office in Cheyenne after 1927, they rubbed that word "School" partly and put the land in the structure in green. They didn't want to put the green on top of the word "School," and in many cases they just rubbed off part of the "School" and put the green on, because this structure was put on here in 1927 by the Land Office at Cheyenne, and also in the year 1944 they just finished that then by clearing that word "School" off of there.

Q. What do you mean by "structure"?

A. All of this green here on Section 36 is an oil and gas structure.

Q. That is green crayon?
A. Yes, we put that on there ourselves.

Mr. Sonosky: The witness indicates that the east half of Section 36 and the northeast quarter of the northwest quarter are marked in green crayon.

Mr. Everett: We have no objection to the testimony with reference to the coloring there, but as to any other significance it might have——

[fol. 206] The Master: That would not be considered.

Mr. Sonosky: No other questions.

(Whereupon, the witness was excused.)

The Master: Then, we will stand adjourned until ten o'clock tomorrow morning.

(Whereupon, at the hour of 4:30 o'clock, p. m. the hearing stood in recess until ten o'clock, a. m., September 12, 1945.)

[fol. 207] Pursuant to recess, the hearing was resumed at the hour of 10 o'clock, a. m., Wednesday, September 12, 1945, whereupon the following proceedings were had:

Mr. Sonosky: Your Honor, I should like to leave a copy of the Manual of Surveying Instructions for 1902. You have the one for 1890.

The Master: That will not go in as an exhibit?

Mr. Sonosky: No.

The Master: I will return that to you.

Mr. Sonosky: When you are through with it, I would appreciate it.

The Master: I understood you were going to furnish the Manual for 1890.

Mr. Sonosky: I gave you that yesterday, Your Honor. I handed you the volume for 1890 yesterday.

The Master: I believe the reporter has it.

Mr. Sonosky: The 1890 Manual was the one relating to the 1892 survey and the 1902 Manual relates to the 1916 survey.

The Master: This is the Manual which was in effect at the time of the last survey?

Mr. Sonosky: That's right. I, at this time, would like to call atttention to Plaintiff's Exhibit 38, and, acccord-

[fol. 208] ing to the record, that was excluded from evidence, and through inadvertence the identification is

marked off, and Your Honor may wish to direct the reporter to note that on the exhibit itself.

The Master: The identification number should be retained on 38.

Mr. Sonosky: I understand, Your Honor, that we are here dealing only with the title, and that the accounting will be a separate phase to be taken up later?

The Master: That will be taken up immediately after both sides have rested on the title.

Mr. Sonosky: But it is separate from this phase of the hearing?

The Master: That's right.

Mr. Sonosky: At this time, the Government has no further proof to offer on the title question and wishes to note for the record that, as to the issue of the known mineral character of the land, that if the Court should hold against the United States on the question of title, on the question of the survey, then it is the position of the Government that the question of the known mineral character of the land becomes one for the exclusive determination of the Secretary of the Interior.

Mr. Ellery: We think that matter is not of any consequence at this time. We would like to have the record [fol. 209] note the position of the State of Wyoming in that respect, and that position is that the United States, having in the first instance submitted an issue as to the known mineral character of Section 36 at the time that the grant under the Enabling Act would otherwise have taken effect, that issue not having heretofore in any manner been submitted to the Department of the Interior, is an issue which the Supreme Court may consider and dispose of, and that was done in the Sweet case, where for the first time the question of the known mineral character of the school section involved there was presented in an action filed in the District Court, and findings of fact were made by the District Court, and those findings were reviewed by the Circuit Court of Appeals, and those findings were thereafter reviewed by the Supreme Court and sustained.

The Master: I don't precisely follow you as to your statement that the determination is exclusively one for the Department. I don't get just what you mean by that. The determination as to what date as the Department may——

Mr. Sonosky: The critical date in this case is December 20, 1892.

The Master: And it is your position that the Court is bound by the determination made by the Department as to the mineral character of this land?

Mr. Sonosky: The Department has not made a deter-- [fol. 210] mination yet, and may not. Our position is that if the Court should hold against the United States on the survey question, then the question of whether the land is known mineral in character is one for the exclusive determination of the Secretary, should he choose to proceed with it, or should the Court direct him to proceed with it. That is a possibility.

The Master: Your position is that the Court must leave that to the Department for a ruling?

Mr. Sonosky: Oh, I think that would be a matter for the Court itself to determine.

The Master: I am sitting here in place of and instead of the Court, and I want to know what your position is with reference to what I should do in this matter. If I should rule that the survey of 1892 was sufficient to identify this property, what is the next step that you believe I should take? Is it my duty to then hear testimony relative to the mineral character of this land?

Mr. Sonosky: Yes, but the Government is willing to stop here and not offer any testimony on the mineral character.

The Master: Of course, it is, and I cannot control the Government in that respect. If that is what the Government desires to do, of course——

Mr. Sonosky: That is correct, Your Honor.

Mr. Ellery: I would like the record further to show at this time, if the Master please, that heretofore it has been the [fol. 211] attitude of the Government that any and every fact that might have any bearing on the question of title should be introduced before the Master so that it can go up to the Supreme Court and be available for consideration, and under that theory a great mass of documentary evidence was introduced. We further want to have the record disclose that the State of Wyoming and the Ohio have present here many expert witnesses on the mineral character of the land, the known mineral character of the land, as of the vital time, and that those witnesses are here prepared on that point, and no other.

The Government having stated that they will offer no further evidence upon the question of the merits of the case which involves the title of Section 36, the State of Wyoming and the defendants, of course, rest their case on the question of title.

The Master: Now, Gentlemen, it makes no difference in so far as the question of where the burden lies which side proceeds to put in testimony on the mineral character of this land. As I said before, I am not in a position to rule upon the question of whether the survey of 1892 sufficiently identified this land to pass the title in the absence of mineral character. On the other hand, the question of the character of this land as of the date of the acceptance of that survey may prove to be the vital point in this case. The [fol. 212] instructions which I received from the Supreme Court are to take such evidence as may be introduced and such as I may deem it necessary to call for. Now, I deem it necessary at this stage of the proceeding to hear evidence on the mineral character of this land as of the date of the acceptance of the survey. Of course, I do not deem it my duty to make an independent investigation to discover who knows of it and determine the witnesses and call them myself, and I am not going to do that, but I want to say to the Government's attorneys that I think it may become a vital issue in this case, but I am not going to attempt to direct their conduct of the case, but I want you to consider that thoroughly, and if you are satisfied to rest your case on the merits at this stage of the case, I am going to permit you to do that at this time. However, I want you to understand that I believe it may prove to be a very important issue here.

Mr. Ellery: We are content with the position of the United States, Your Honor.

The Master: Are you content to rest?

Mr. Sonosky: Yes, Your Honor.

The Master: Then, as I said before, we will take up the accounting.

Now, in connection with that—and there is no use going into any conference; we can do this in open court; at least, I can state my position and give you time to think it over—[fol. 213]the Master is permitted to direct the method of accounting.

In this case the record shows that there has been prepared by the defendant The Ohio Oil Company a statement

of the gross proceeds that they have received from the operation of this field. Also, it appears that they have prepared a statement showing their expenses in connection with the operation of this field. I would like to have both of those statements filed for the record.

Mr. Ellery: Off the record.

The Master: Yes.

(Conference.)

The Master: The record may show that the witnesses other than on the accounting phase may be excused, and we will stand in recess until you gentlemen advise me that you are ready. I hope it will not take you too long to get together; and let it be understood that this conference is between The Ohio Oil Company and the Government to see if they can work it out.

(Whereupon, at the hour of 10:30 a. m., a recess was taken.)

The Master: The first thing, I think, is the introduction of the statements of both sides.

Mr. Gee: If the Master please, in line with your request that each side submit its own statement of the description [fol. 214] of the overhead accounting methods, the defendants have prepared such a statement.

The Master: Now, gentlemen, on this statement, I am going to have it included in the record, that is, written in the record, so that it will not be received as an exhibit, but I will instruct the reporter to include it in the record.

Mr. Gee: Has counsel for the plaintiff such a statement?

Mr. Sonosky: Yes, we have prepared a statement, and I understood it is to be read into the record, and we made changes on the copy.

The Master: You may read your statement into the record at this time. And before you do, it is agreeable to counsel for the Government that the reporter include the statement which has just been filed by the attorney for The Ohio Oil Company into the record?

Mr. Sonosky: I haven't read the statement, Your Honor.

Mr. Gee: I shall be glad to read it into the record if that is the preferable method of procedure.

Mr. Sonosky: It will be agreeable to have the reporter put it into the record.

The Master: Yes, it can be put into the record by the reporter, without the necessity of reading it.

Mr. Sonosky: I have a statement here, and I can make a prepared copy which I can supply to counsel for the Ohio.

[fol. 215] The Master: I should like to say this for the record, so it will be intelligible, and it should precede these statements in the record, that, pursuant to the suggestion of the Special Master, the attorneys for the plaintiff and the attorneys for the defendant The Ohio Oil Company held a meeting at which they discussed the methods by which the figure of overhead was arrived at, with the thought that they would agree upon the precise method used. In that conference it developed that there was a certain difference between the attorneys representing the Government and the attorneys representing The Ohio Oil Company, so, at the suggestion of the Special Master, each party prepared a statement as to its construction of the methods pursued, which were to be considered, and if the Special Master determines that he desires evidence on the methods used, that evidence will be taken at a hearing to be held later.

Mr. Gee: That is the way we understood, and the statement that was just handed to you a moment ago is directly in line with that suggestion, and I believe the preamble thereto recites about what Your Honor has just stated in the record.

The Master: And that is your understanding, Mr. Sonosky?

Mr. Sonosky: Yes, Your Honor, that is the Government's understanding. I am now handing counsel for The Ohio Oil Company a prepared copy, and one which I intended [fol. 216] handing to Your Honor.

The Master: Now, Mr. Sonosky, may I ask if the statement that you have handed me, you agree that it may be placed in the record by the reporter at this point?

Mr. Sonosky: Yes, Your Honor.

The Master: Without the necessity of being read in open court?

Mr. Sonosky: Yes, and that represents the Government's understanding of the method used in reaching the claimed figure for overhead on Section 36.

The Master: I will hand that to the reporter.

(The statement of plaintiff is as follows:)

"*Explanation of Overhead:* The Company is engaged in the general business of producing oil and gas in Wyoming, and in 19 other states. It is also engaged in the business of refining, marketing and transporting oil, gas and petroleum products in several of the states. It has its General Office at Findlay, Ohio, and it has a Division Office at Casper, Wyoming, embracing the entire State of Wyoming. The activities of the Company in Wyoming which are handled through the Casper Division Office relate only to production. It has Division Offices in other states for the handling of activities of other Divisions.

Throughout the period from 1917 to the present time it appears from the Company's books and records that no im- [fol. 217] portant changes have been made in the classification of its overhead costs. Overhead consists of a portion of the general and administrative costs of the Company's General Office maintained in Findlay, Ohio, and a portion of similar costs of the Casper Division Office in Wyoming. In so far as the Casper Division is concerned, overhead expenses have been and are largely for salaries and expenses of officers, superintendents and clerks, and for the cost of office supplies, insurance and pensions, for the amount of depreciation of Company-owned office buildings and office equipment in Findlay and Casper, for legal services and expenses, for telephone expenses, for damages and miscellaneous. At no time has the Company attempted to allocate its overhead costs to individual producing leases and does not and has not maintained separate records for that purpose as to Section 36. It has distributed the overhead costs to producing areas. In this case the Casper Division and the producing area, Wyoming, are synonymous.

The schedule of overhead, Exhibit A, Page 40, shows that $22,461.00 has been allocated to Section 36 as overhead. This sum was reached by charging Section 36 with that proportion of the overhead for the Casper Division of the Company which the sum of the capital expenditures and operating expenses made on Section 36 bore to the sum of the capital expenditures and operating expenses made by the Com- [fol. 218] pany for its entire Casper Division. The overhead for the Casper Division included both the overhead

costs charged to that Division plus the Division's proportionate share of the Company's general office overhead in Findlay. The Casper Division's proportionate share of the general office overhead was determined by charging to that Division that portion of the overhead of the general office which the sum of the capital expenditures and operating expenses made in its Wyoming producing operations bore to the sum of the capital expenditures and operating expenses made by the Company throughout the United States.

To assist in understanding the overhead schedule set forth in Exhibit A, Page 40, the following explanation is offered: Column 3 shows the total of the capital expenditures and operating expenses made on Section 36; Column 4 shows the total of the capital expenditures and operating expenses for the entire Casper Division including the expenditures made on Section 36; Column 5 is the ratio or percentage between the expenditures on Section 36 and the expenditures for the entire Casper Division; Column 6 shows the amount of overhead charged to the Casper Division. The total overhead charge shown in Column 6 is multiplied by the percentage shown in Column 5 and the result represents the amount of the overhead allocated to Section 36 (see Column 7). It is understood that for the [fol. 219] purpose of this case the figure '.381' at the foot of Column (5) has no meaning. This schedule has been prepared for each year from 1917 through 1944, and carries forward at the foot of each column the total for all those years."

OFFER IN EVIDENCE

(The statement of the defendant The Ohio Oil Company is as follows:)

"In Reference to the Accounting Matters.

At the request of the Special Master, Defendant The Ohio Oil Company submitted a statement of its expenditures and earnings, and also of royalties, paid by it covering State Land Section 36, T. 58 N., R. 100 W., Wyoming, which is now identified as Defendants' Exhibit 'A'. At Page 40 thereof is a schedule of overhead costs. On this item plaintiff and defendants have not been able to agree.

At the further request of the Special Master, Defendant The Ohio Oil Company hereby sets forth a description of its position as to its accounting methods employed in deter-

mining the amount of overhead costs allocable to said Section 36. In this statement The Ohio Oil Company is referred to as the 'Company.'

Overhead: The Company is engaged in the general business of producing oil and gas in Wyoming, and in 19 other states. It is also engaged in the business of refining, marketing and transporting oil, gas and petroleum products in several of the states. It has its General Office [fol. 220] at Findlay, Ohio, and it has a Division Office at Casper, Wyoming, through which it directs and handles its producing business in that state. It has other Division Offices in other states for handling the activities of other Divisions. In Wyoming, for the purpose of this accounting, the Company has used only its book figures relative to its production activities.

The Company has kept a record of all its overhead costs in connection with its production of oil and gas during all of the years here in question. Throughout the period from 1917 to the present time it appears from the Company's books and records that no important changes have been made in the classification of its overhead costs. Essentially the same expenditures have been classified in the overhead accounts over this entire period. Overhead costs are treated by the Company as synonymous with administrative and general expense items. In this category are included only those expenses that relate to producing activities and these have been and are largely for salaries and expenses of officers, superintendents and clerks, and for office supplies, insurance and pensions, depreciation of Company-owned office buildings and office equipment in Findlay and Casper, legal services and expenses, telephone, damages and miscellaneous matters relating to said production activities. At no time has the Company attempted to allocate [fol. 221] its overhead costs to individual producing leases but it has distributed the overhead costs to producing areas. In this case the Wyoming Division and the producing area, Wyoming, are synonymous. The overhead account on the books of the Company has been uniform as to the Division accounts.

The overhead charged to Section 36 consists of a portion of the general and administrative costs of the Company's General Office maintained in Findlay, Ohio, and a portion of similar costs of the Wyoming Division Office maintained

in Casper, Wyoming. The Wyoming Division embraces the entire State of Wyoming.

The schedule of overhead, Exhibit A, Page 40, shows the total overhead allocated and charged to Section 36 to be $22,461.00. This sum was reached by charging Section 36 with that proportion of the overhead for the Wyoming Division of the Company which the sum of the capital expenditures and operating expenses made on Section 36 bore to the sum of the capital expenditures and operating expenses made by the Company for its entire Wyoming Division.

The overhead costs for operations in the Wyoming Division for the years in question are shown in Column 6 of Exhibit A, Page 40. The amounts shown in said Column 6 include the overhead costs for the Wyoming Division and that portion of the overhead costs incurred in the operations of the General Office at Findlay, Ohio, which portion [fol. 222] was determined by application of a uniform formula, as follows: The total overhead for the Company's General Office at Findlay relating to producing operations was computed. Wyoming was then charged with that portion of the overhead of the General Office which the sum of the capital expenditures and operating expenditures made by the Company in its Wyoming producing operations bore to the sum of the capital expenditures and operating expenses made by the Company in its producing operations throughout the United States. The total amount of overhead costs incurred in Wyoming producing operations as determined above is recorded on the Company's books of account.

To assist in understanding the overhead schedule set forth in Exhibit A, Page 40, the following explanation is offered: The schedule was prepared by taking the sum of the capital expenditures and operating expenses made on Section 36 for each year (see Column 3), the sum of the capital expenditures and operating expenses made by the Company in all of its producing activities in the State of Wyoming in each year including expenditures made on Section 36 (see Column 4) and determining therefrom the ratio between these annual totals, namely, the ratio of the items shown for each year in Column 3 to Column 4 (see Column 5). The Company next took the amount of overhead in the State of Wyoming for each year (see Col-

umn 6) and multiplied this by the percentage shown in Column 5 for each year and thereby determined the amount [fol. 223] of overhead costs that should be allocated to Section 36 for each year (see Column 7). Cents were dropped from the figures set forth in Columns 4, 6 and 7. This schedule has been prepared for each year from 1917 to and including 1944 and carries forward at the foot of each column the total for all said years. All the facts and figures set forth in the schedule were submitted to and examined by plaintiff. They were reported to be correct. The method of allocation used by the Company in connection with the determination of its overhead costs is reasonable and consistent with accepted accounting practices.

Respectfully submitted, State of Wyoming, by —— ——; The Ohio Oil Company, by —— ——, Defendants."

Cheyenne, Wyoming, September 12, 1945.

COLLOQUY

Mr. Gee: If Your Honor please, may I make an inquiry at this state of the record in connection with the statement that was handed to you this forenoon showing the expenditures, earnings and royalties paid?

The Master: I am about to take that up.

Mr. Gee: Thank you.

The Master: Now, Mr. Sonosky, there has been handed to me an original document designated on the cover as "De- [fol. 224] fendants' Exhibit A," which is a statement of the expenditures, earnings, and royalties paid by the defendant The Ohio Oil Company, from February, 1907, to January 1, 1945, on the land in Section 36, Township 58 North, Range 100 West. Now, is the Government, or the plaintiff, willing to agree that this statement correctly reflects the books of The Ohio Oil Company as to this operation, except as to the item of overhead, and it may be received as proof of the expenditures, earnings and royalties paid?

Mr. Sonosky: Your Honor, I presume that the statement handed to you is the same as the statement which I was furnished, I don't know, without checking it. When was it furnished to you, Your Honor?

The Master: This was first furnished this morning, and later, at my suggestion, the original cover having been marked "Stipulation," it was changed, and instead of "Stipulation" it is now marked "Defendants' Exhibit A."

Is this the same statement that has heretofore been furnished to the Government?

Mr. Gee: That is intended as the same statement of those accounts that has been furnished before. We would, however, be glad to compare what he has with this statement, because several copies have had to be run off at different times and there may be some typographical errors or corrections that might appear, but, at any rate, he is supposed [fol. 225] to have a correct copy of the statement which we have now given to Your Honor, and if he does not have, then I would say that we want him to have ample time to compare it. I cannot say from memory now when he received the statement that he is now referring to.

The Master: I might say that the ultimate figures agree with the Government's request for admissions.

Mr. Sonosky: I am willing to accept counsel's word that this is intended to be the same statement.

Mr. Gee: It is.

Mr. Sonosky: But I would like it better if our request for admissions, which called for the ultimate figures exactly as they are in the statement, were answered, and then we can let this statement go in as support of that response to the request. I think that is reasonable.

Mr. Gee: If he would make a comparison there with our figures, I think he would find they are the same.

Mr. Sonosky: I know, because I checked over the same statement that you now furnished to the Court, so I know it must be the same.

The Master: The ruling of the Court on that is that a comparison of the figures shows it is the same, so the filing of this statement is in effect a response to your request for admissions.

Mr. Gee: If I understood the Master correctly the other [fol. 226] day, that request was denied. I should think you can make your own observations that the figures that you sought are or are not the same as those that are now being submitted in the statement that we are filing with the Court.

The Master: I have checked it and the ultimate figures seem to agree.

Mr. Sonosky: Then, I don't see why counsel hesitates to admit that those figures are the same as those requested.

The Master: It may be technical, but he is standing on the ruling that the request for admissions was untimely. I can't see what difference it makes.

Mr. Sonosky: I am only interested in saving time, Your Honor. If the request is granted, and those admissions are made, then I am willing that this go in without checking.

Mr. Gee: Why don't you compare them now? It is right there before you.

The Master: How long would it take you to check them?

Mr. Sonosky: I don't know. It runs from Pages 1 to 40. I think the record should show that the fact that our request for admissions was deemed untimely was through no fault of the Government, but it was caused solely by the fact that at the suggestion of the Master, and because the parties themselves desire to reach an agreement, we were working on that very thing, and our time was taken up on that.

The Master: I understand that, but we now have the [fol. 227] exhibit handed us, which, under the statements heretofore made in court, correctly reflects the books of the corporation.

Mr. Sonosky: I don't know whether those statements were made by the Government in court.

The Master: As I understand it, Mr. Sonosky, you said the only question you had with reference to the statement was with reference to the question of overhead.

Mr. Sonosky: I was speaking in connection with the request for admissions.

The Master: But that was your statement.

Mr. Sonosky: But this statement was not then before the Court.

The Master: I am willing for you to take as much time as you wish to check the original which has been offered with any copy that you have.

Mr. Sonosky: Yes, sir.

Mr. Gee: And then, Your Honor, we would like to know, in connection with that offer, just what the situation is with reference to all parts thereof, and I think that is what Your Honor was seeking to bring out a moment ago, and I think we are entitled to know what that is.

My attention is called to a previous part of the record, in which counsel made this statement to Your Honor, on Page 9 of Volume I—"As to the amount of expenditures

[fol. 228] made by The Ohio Oil Company in the operations of Section 36, we are in substantial agreement as to the amount of capital expenditures made by the Company, including the cost of drilling five oil wells, three water wells, and the lease equipment; we are in agreement with the figures of The Ohio Oil Company as to the amount of money they expended for operating Section 36 from the beginning of production through December 31, 1944, the period checked; we are in agreement with the figures of The Ohio Oil Company as to the amount of taxes they paid on production and personal property in connection with their operations in Section 36. The only other item is overhead. The Ohio Oil Company claims a sum of about $22,000.00——"

The Master: That is the way I understood it.

Mr. Gee: Yes, and that is the way I understood it.

Mr. Sonosky: And that is still the situation.

The Master: The only question in the mind of Government counsel is that the exhibit offered may not be a true copy of the exhibit which was in his possession, so I am going to give him time to check that if he desires it.

Mr. Sonosky: Now, Your Honor, I don't want to postpone or delay the hearing because of that. We can proceed, and check it later. The checking is only for the purpose of checking the figures.

The Master: And subject to any possible corrections that you might desire to have made in it, if any, but it is accepted [fol. 229] by the Government as a correct reflection of the books of the corporation?

Mr. Sonosky: Except as to the item of overhead.

The Master: All right, it will be received at this stage of the case.

Mr. Gee: May I inquire at this point, do we understand in connection with that statement that any witnesses here may be excused for the present with reference to this matter?

The Master: With reference to the proof of any items——

Mr. Gee: With reference to the proof of any items therein, and that will, of course, include any arrangement that we might otherwise have to make to get witnesses here?

Mr. Sonosky: Before you rule on that, Your Honor, there is one more thing. We haven't yet heard from the State as to whether it has received these royalties.

The Master: I was going to inquire about that.

Mr. Sonosky: I think that ought to be disposed of as a unit before we go any further.

The Master: I was going to inquire about that. Mr. Ellery, in this exhibit, on Page 1 thereof, there is an item "Royalty Paid" of $17,306.30. Is the State of Wyoming willing to accept that as the amount of royalties that was received by the State of Wyoming in this operation?

Mr. Ellery: The State of Wyoming is. We accept that [fol. 230] as a correct statement of the royalties received by the State.

The Master: Is the Government willing to accept that as a correct statement of the royalties received?

Mr. Sonosky: For the dates covered by the statement?

The Master: Yes, for the dates covered by the statement.

Mr. Sonosky: Yes, Your Honor.

The Master: That will be the finding of the Court.

Mr. Sonosky: There is one more item, and that is taxes. I would like to inquire whether the State will accept the statement that taxes in the sum of $4,317.40 were paid for that period covered by the statement by The Ohio Oil Company to Park County, Wyoming.

Mr. Ellery: The State of Wyoming will admit that the sum of $1,522.89 was collected by the Treasurer of Park County, Wyoming, and that distribution of that tax money so collected has been made either to the State or to other subdivisions of the State entitled thereto.

The Master: Pursuant to the laws of the State of Wyoming?

Mr. Ellery: Pursuant to the laws of the State of Wyoming.

Mr. Sonosky: I believe Mr. Ellery, through inadvertency, [fol. 231] mentioned only one part of the taxes, and not the total.

Mr. Ellery: I am going to come to the production taxes. The admission just made relates to personal taxes collected by Park County. The State of Wyoming will admit that its taxing authorities during the period of time covered by the accounting statement which has been submitted, and which items are shown on Page 28 of said statement, have received the sum of $2,794.51 by way of production taxes.

The Master: Is that all right?

Mr. Sonosky: That is fine. That is satisfactory to the Government.

Mr. Ellery: And I might add to that that said sums were distributed according to the laws.

The Master: It is up to me, of course, to determine what the law is.

Mr. Ellery: That's right.

The Master: Now, you may proceed.

Mr. Sonosky: I think it would be in order now for the Government to read into the record its objections as to those various items which are now in the record as if they had appeared in the regular course of the trial.

The Master: There is no objection as to the amounts but the objection is as to the allowance?

Mr. Sonosky: As to the allowance.

The Master: You may do so, Mr. Sonosky.

[fol. 232] Mr. Sonosky: As to the capital expenditures generally, the Government objects to their allowance as to the capital expenditures generally, as shown on Pages 3 to 23, inclusive, of Defendants' Exhibit A. The defendant objects on the ground that The Ohio Oil Company is a willful trespasser and the Government is therefore entitled to recover the value of the oil without deductions of any kind.

Now, if you wish, Your Honor, I can cite authorities supporting these objections as I read them into the record.

The Master: Yes, you can just read them into the record.

Mr. Sonosky: There is the Wooden-Ware Company case——

The Master: Oh, no, I didn't mean that. I suggest that you read your objections into the record.

Mr. Sonosky: Just by way of convenience, I can do it in that way, and I can give you these citations later.

We object on the further ground that even if the Ohio were an innocent trespasser, no deduction may be made for the cost of the five oil wells and the three water wells and the lease equipment, on the ground that those items constitute and represent permanent improvements to the land, placed thereon by the trespasser, The Ohio Oil Company, for its own benefit and use and without the consent of the United States, which neither ordered nor desired the improvements.

We object on the further ground that under the law a [fol. 233] trespasser is not entitled to remove permanent improvements placed by the trespasser on the land of the United States, nor is such a trespasser entitled to payment for such permanent improvements through the device of

making a deduction in an accounting. The fact that an accounting was present should not change the rule or measure of damages.

In support of this, the Government points out that if a producing well had been brought in, and the United States had regained possession at the time before any oil had been extracted, the trespasser would not have been allowed to deduct the cost of the well, even though innocent.

With respect to Wells Nos. 4 and 5, it just occurs to me, Your Honor, as to those Wells 4 and 5, there is no evidence in the record that those wells were non-producers and dry wells, and the statement itself does not show the production from each of the wells, so it is not possible except by inference to determine that.

The Master: You may make your objection and then you will be given opportunity to offer proof in support of your objection.

Mr. Sonosky: We object on the ground that Wells 4 and 5 do not constitute an improvement to the land, in that they do not contribute whatsoever to the production of oil, and on the further ground that the United States should [fol. 234] not be charged with what amounts to an expensive mistake of the trespasser, proceeding for his own benefit. As to the dry wells, the Government also renews its general objection on the ground that The Ohio is a willful trespasser.

As to the charge for operating expenses of $70,083.82, the Government objects on the ground that The Ohio Oil Company is a willful trespasser and therefore not entitled to deduct operating expenses.

As to the charge for taxes, the Government renews its objection, on the ground that the Ohio is a willful trespasser, and further objects on the ground that if the United States itself had extracted the oil, it would not have had to pay taxes, since it is immune from State taxation.

As to the item of overhead, the Government objects, on the ground that the Ohio is a willful trespasser and not entitled to any deductions, and on the further ground that except for the purpose of this case the item has never been charged on the books of the company as directly against Section 36, and the further objection, on the ground that the charge represents an arbitrary allocation to Section 36 of administrative and general expenses, including such items as salaries and expenses of officers, superintendents

and clerks, the cost of office supplies, insurance, pensions, legal services, telephones, and so forth, depreciation of company office buildings and office equipment in Findlay, [fol. 235] Ohio, and Casper, Wyoming, and other miscellaneous items in connection with its general office in Findlay and its division office for the entire State of Wyoming.

The Government further objects to the overhead, on the ground that those charges represent fixed expenses which the Company would have incurred even if it had never trespassed on Section 36.

The Government further objects on the ground that even if the Ohio is an innocent purchaser, it is not entitled to deduct a single penny not spent directly on Section 36 in the extraction of oil from that section.

In connection with the Government's objection as to Capital Expenditures, through inadvertence I may have omitted reference to Water Wells Nos. 1, 2 and 3, and, if so, they should be included within the objection.

The Master: I notice there are one or two questions of fact in connection with your objections that I think may well be cleared up at this time. First, as to the status of these wells, as I understand it, Nos. 4 and 5 are dry wells. Is that correct?

Mr. Gee: No. 4, as I understand it, was a well that was abandoned because it was a non-commercial well. No. 5 is one that was started and stopped almost immediately, and the total charge thereon was $48. So that No. 5 is an insignificant issue.

[fol. 236] The Master: There is no necessity of proof, then, on that point, that Nos. 4 and 5 are not producers.

Mr. Gee: Nos. 4 and 5 are non-producing wells.

Mr. Sonosky: Well, there may be this distinction, between a non-producing well and a well which never produced. Does Your Honor understand that No. 4 never produced?

The Master: That is my understanding of it.

Mr. Gee: My understanding is it is a non-commercial well; whether it produced anything or not, I say it is a non-commercial well.

Mr. Sonosky: If Your Honor's understanding is that it is a dry well, I am satisfied.

The Master: Now, is it not further admitted by The Ohio Oil Company that there is no present charge on their

books of overhead as against this operation? That is your general overhead charge?

Mr. Gee: The statement that was furnished to you does show that The Ohio Oil Company, in the keeping of its accounts and book records, did not, on overhead administrative cost, charge it directly to a lease, but the method of accounting that was employed is such that it can be readily determined what the amount of cost to that lease was.

The Master: I think I understand that.

Mr. Gee: And we should also like to make the comment, as far as No. 4 well is concerned, and the No. 5 well, in [fol. 237] fact, that just because it was a non-commercial well, is by no means an admission on our part that it was not a proper charge.

The Master: I realize that. I simply wanted to avoid the taking of the testimony.

Mr. Gee: That is what I had in mind. If there are any questions of that kind, we would like being called upon to make that showing.

The Master: Mr. Sonosky, do you desire at this time to offer evidence in support of your objections?

Mr. Sonosky: I don't think, Your Honor, the objections require any further evidence.

Mr. Gee: May it please Your Honor, I have one slight correction, to be as nearly correct as we can on these things, in defining that No. 4 well: That the records thereof indicate that it was termed an abandoned oil well. What I said to Your Honor was my information, that it was a non-commercial well. But that is what it is.

Mr. Sonosky: An abandoned oil well may have been a producing well at one time, and may have been abandoned. I want it understood that this well never produced oil—was a dry well.

The Master: It never produced commercial oil, as I understand it.

Mr. Everett: It was a non-commercial well, we will say. [fol. 238] The information that I have on it was taken from the deposition of one of the Government's employees, in another case, Your Honor, and he designates it as an abandoned oil well. That is the best information I have.

Mr. Sonosky: If we are going to go into that, Your Honor, then our man who examined The Ohio Oil Company books will state that there are no records showing that any oil was ever produced from No. 4, and that it was a dry

well. Now, why are we weaseling about these words? It either did or did not produce commercial oil.

Mr. Everett: I think it is indicated by the records that we have had no income from it.

The Master: Have you any proof that you desire to offer at this time on anything?

Mr. Sonosky: I think we are back again, Your Honor, to the question of law, before we come to our question of proof on willful trespass.

The Master: I assume you want to make an offer of proof on that. If you want to make a record on what you propose to show, you may do so.

Mr. Sonosky: Of course, the Government is anxious that the Master reach a correct conclusion in this case.

The Master: It is no more anxious than the Master.

Mr. Sonosky: And the Government is anxious that the Court reach a correct conclusion. And to that end we [fol. 239] should like to have everything in the record that we think would be necessary to reach a correct conclusion.

The Master: I think the Master has gone beyond counsel on both sides in desiring things in the record.

Mr. Sonosky: And before proceeding with the offer of proof, with Your Honor's permission I should like to make a statement in order that the record may show what we understand the status of the case to be with respect to this accounting. As I understand it, the question before us now is whether, under the pleadings, the issue of whether The Ohio Oil Company is an innocent or a willful trespasser is in the case.

The Master: Whether the Master has the right at this time to receive evidence on that point. And in this connection I believe the Government should make a complete offer of proof so that your record is complete and the Court will have before it a complete offer, in connection with both the question of my ruling and the question of the effect the ruling may have on the decision in the case.

Mr. Sonosky: Now, since there is no evidence in the case at the time of your ruling, your ruling of necessity must be on the pleadings.

The Master: Yes. As I advised you, it was not a ruling; it was simply my advice to you as to what I would rule according to the opinion I had at the time this ques- [fol. 240] tion arises.

Mr. Sonosky: I see.

The Master: Now, the only way to bring the question before the Court is by an offer of proof, and if you will proceed to make your offer of proof, I assume there will be objection to it, and I will then rule.

Mr. Sonosky: Well, it comes to my mind that the burden is not on the Government to proceed, and before we undertake our offer of proof, I should like to explain that to Your Honor.

The Master: Go ahead.

Mr. Sonosky: As we understand the question, the necessity now arises on the pleadings. The Government has alleged that "the State of Wyoming claims some right, title or interest in the land adverse to the United States." That is a stock phrase, asserted in any quiet title proceeding. And the Government alleged that "the defendant, The Ohio Oil Company, claims some right, title, or interest in said Section 36 under an oil and gas lease or leases granted to it by the State of Wyoming, and now is and for many years last past has been in the actual possession of said Section 36."

There is nothing in the record at this time to show whether The Ohio Oil Company today is in possession under a lease, or to show whether The Ohio Oil Company initially went into possession under a lease. The allega- [fol. 241] tion in the complaint is that the Ohio, at the time this complaint was written, is claiming under a lease. There is nothing in the record today to show whether they are in there under an oil and gas lease, under a grazing lease, under an agricultural lease, or just what the conditions of the lease are, or what the terms of the lease are. There is nothing in the evidence to prove they are even lessees. This allegation, assuming the most for it, does no more than show that the Government admitted—and we say that only by way of argument—that on the date this complaint was filed they were claiming as lessee under Wyoming. They may have taken the lease out the day before, and it may not have been an oil lease.

The Government feels under those circumstances, that the Ohio should go forward in order to establish that it is an innocent trespasser, which it can do by demonstrating, perhaps, if it is able, how it came into possession, and such other facts as they may have.

Now, I take that view without going past the complaint, which is the worst possible view the Government could

take of it; but if we go further and look at the answer of The Ohio Oil Company, and realize that the company itself has placed in issue the question of good faith in its Paragraph No. 5, on Pages 1 and 2, and realize that the Government in its reply denied that good faith, then we have the specific issue joined on good faith; and if we are [fol. 242] to be controlled as between a general allegation in the complaint and a specific issue drawn between the parties, then, as we all know, the rule of pleading requires that the specific issue controls.

Now, the Master has indicated that, so far as possible, and subject to limitations he may place on the situation, the Federal Rules of Civil Procedure will govern, and I think that is right, because the Federal Rules of Civil Procedure govern procedure in all the Federal District Courts in the United States, and these rules were promulgated under authority of an Act of Congress, and bear the approval, as required by the Act of Congress, of the Supreme Court itself; so that, in the absence of any other rules, it would seem natural to turn to the rules to which the Supreme Court has directed subordinate Federal Courts.

Now, if we approach this problem in the spirit of the Federal Rules of Civil Procedure, it becomes quite apparent that if any inferences are to be drawn from pleadings, they are not to be drawn against the pleader. That day has gone. The rule is no longer in force that technical exactness and refined inferences to be drawn from phraseology in the complaint, or in any of the pleadings, are to be held strictly against the pleader. The rule itself states that they are to be construed to do substantial justice. That is Rule 8. And to do substantial justice means [fol. 243] that the pleadings should be so construed that each party gets a full and complete hearing on its theory of the case, and all facts be put into the record, so that the Court will be able to determine that issue from a complete record, and not of necessity from inferences which may not be justified in fact.

The Master: If you are making an argument instead of an offer of proof, the Court will not hear you.

Mr. Sonosky: I am not making an argument in support of our offer of proof. I am making an argument on the point that the Government is forced to go forward on an issue which does not belong to it.

The Master: Very well.

Mr. Sonosky: Now, I don't know whether the Court is being influenced by the fact that the result which might accrue by reason of going forward with this accounting does not appeal to the Master's conscience, and for that reason the pleadings are being interpreted against the pleader.

The Master: I am not interpreting the pleadings. It is urged by the Government and admitted by the defendant that The Ohio Oil Company is in possession under a lease from the State of Wyoming. Now, both parties have alleged that there is no proof necessary to establish that.

It is my ruling that, at this point, The Ohio Oil Company is there under a claim of right and is not a willful trespasser, and it is not necessary for The Ohio Oil Company [fol. 244] or the State of Wyoming to offer any proof on that.

If the Government desires to contest that point, I believe it has the right to contest it, and if you desire to make an offer of proof, it is your right to do so.

Mr. Sonosky: Yes, Your Honor.

The Master: And all that I have said heretofore concerning it, I say because you were advised ahead of time as to what my ruling would be when we reached that point so that you could be prepared to show that I was mistaken. Now, as a preface, having now ruled, as I do rule, that under the state of the record at this point The Ohio Oil Company is an innocent trespasser, if that is the proper expression, or is not a willful trespasser, the burden is on you——

Mr. Sonosky: And the only point that the Government makes is that there is nothing in the record to justify that except the pleadings and, therefore, the inference is from the pleadings——

The Master: I have overruled your position on that, and I have asked for authorities to sustain that position, and at this time I have not received them, so you now may make your offer of proof.

Mr. Sonosky: Your Honor yesterday granted me permission to present them to you today, and from what I have been able to find, I think both sides rely on the same cases.

[fol. 245] The Master: Now, you may make your offer of proof, and then they can make an objection, and then we

will hear the authorities on the admissibility of that evidence.

Mr. Sonosky: Your Honor, at the request of the Government, the State of Wyoming furnished or permitted Government counsel to examine the books of the State Land Office and furnish the Government with certified copies of various documents taken from the records of the State Land Office. When the certifications were sent to us, the Deputy who certified placed under one seal a number of instruments which, if placed in the record in that order, would not present a chronological picture——

The Master: Before you even have them marked for identification, I would like a statement from you as to what they purport to show.

Mr. Sonosky: May I finish with one thought on that, Your Honor?

The Master: I beg your pardon.

Mr. Sonosky: My only thought on that point was that if counsel for the defendants have any objection to lifting the single certification in order that the various instruments below that certification may be introduced separately——

The Master: The officer who has charge of those documents is right here in the building?

Mr. Sonosky: Yes.

[fol. 246] Mr. Everett: If I might make a suggestion in that connection, I think we have copies of almost everything that you have, and probably a lot more than you sought to get from the Commission, and I believe that if we could have an opportunity to compare them, Your Honor, we could arrange it so that Mr. Sonosky could make his offer in whatever order he wishes. I don't think it is necessary to have the certificate.

Mr. Sonosky: That will be fine.

The Master: All right. We will be in recess for ten minutes.

Mr. Sonosky: I want them to be considered as certified. I just want permission to treat the documents as certified after they are removed.

Mr. Everett: Do you propose to offer only part of the letters?

Mr. Sonosky: I want to take them apart so I can offer them separately.

Mr. Everett: No, what I am getting at is, do you propose to offer all of the letters that bear on this particular phase, or only part of them?

Mr. Sonosky: I will have to consult on that.

The Master: We will be in recess for ten minutes.

Mr. Everett: I would like to have an answer to that question, Your Honor, before we recess.

Mr. Sonosky: We are going to offer in evidence all that [fol. 247] we have found.

Mr. Everett: Those are the complete files, do you mean to say?

Mr. Sonosky: No, they are not the complete files. We did not take everything out of the books. We just took the things that suited our theory of the case.

The Master: I think that is a matter of objection at the time he offers them.

Mr. Everett: All right.

The Master: I will again state we will recess for ten minutes.

OFFERS IN EVIDENCE

(Whereupon, a recess was taken, during which documents were marked for identification as Plaintiff's Exhibits 49 to 70, inclusive, Plaintiff's Exhibit 71 for identification having been cancelled by counsel for the Government, and additional documents being marked for identification as Plaintiff's Exhibits 71 to 91, inclusive.)

The Master: I assume you are ready to proceed?

Mr. Sonosky: Pursuant to the ruling of the Master, the Government offers in evidence, in connection with the accounting phase of the case, the following documents——

The Master: Make your identification as brief as possible.

[fol. 248] Mr. Sonosky (Continuing): —all of the following documents, Nos. 49 to 91, so marked consecutively, as plaintiff's exhibits for identification. I will just refer to them by number.

Plaintiff's Exhibit 49, consisting of two letters, one dated October 2, 1929, and one dated October 4, 1929.

I might mention for the record that all of the exhibits numbered from 49 to 91, inclusive, for identification, were taken from the official records of the office of the Commissioner of Public Lands of the State of Wyoming in the State Capitol at Cheyenne, Wyoming, with the exception of two

of the exhibits, Nos. 87 and 84, which were taken from the records of the Department of the Interior.

Mr. Everett: We object to the offer for the reason that it is wholly irrelevant and immaterial. There is no issue on this matter before this Court at this time.

The Master: What do you propose to show by them?

Mr. Sonosky: These exhibits are for the purpose of establishing that the defendants were willful trespassers on the land in controversy for all or a part of the time in controversy, and they had full knowledge of the title and ownership of the United States.

Mr. Ellery: May I have the record cleared up on that point? I understood Mr. Sonosky at least once yesterday to announce that there was no claim on the part of the [fol. 249] United States that the State of Wyoming was a willful trespasser, and if he is now offering that as against the State of Wyoming, of course, the State has an objection. That is not a matter at issue under the pleadings.

The Master: In what way would the proffered exhibits tend to prove that The Ohio Oil Company was a willful trespasser?

Mr. Sonosky: That particular one?

The Master: Yes.

Mr. Sonosky: It would go to the State.

The Master: In what way would it tend to prove the State of Wyoming was a willful trespasser?

Mr. Sonosky: Knowledge.

The Master: Now, have you any authority for the position that you take that knowledge that someone else claims the land makes you a willful trespasser when you take possession of it?

Mr. Sonosky: I don't know that I can furnish Your Honor with a pat case on that point or not.

(Argument.)

The Master: The objection to the offer will be sustained.

Mr. Sonosky: The Government will continue with its offer of exhibits, and will offer in evidence Plaintiff's Exhibit 50, two letters, both dated October 4, 1929, one from [fol. 250] Commissioner C. M. Cox to the General Land Office, and the other from Commissioner Cox to the United States Land Office at Cheyenne.

Mr. Ellery: I object to the offer, Your Honor, on the same ground indicated to the former offer.

Mr. Everett: We make the same objection.

The Master: The objection will be sustained.

Mr. Everett: May we have an understanding that our same objection applies to all of these offers?

The Master: Yes, the objection by either defendant will be the objection on the part of both defendants.

Mr. Everett: I mean, is it understood that the same objection applies to all of these offers, or do you want us to repeat it each time?

The Master: Let me inquire from you, Mr. Sonosky, if all of the documents and letters that have been marked for identification go to this point?

Mr. Sonosky: I am not that familiar with all of them, but I think I can safely say that they are to this point.

The Master: Exhibits 50 to 91—are you gaining anything by offering them separately? I don't want to foreclose you in any way, but couldn't you offer them all? They will all go into the record for identification.

Mr. Sonosky: If you have in mind saving time, what we could do——

[fol. 251] The Master: No, it isn't so much a matter of saving time as it is a matter of making the record.

Mr. Sonosky: I don't know of any way of doing it out of order.

The Master: Well, you may proceed. The objection to Exhibit 50 will be sustained.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit 51, a letter dated October 8, 1929.

The Master: The objection will be sustained.

Mr. Healy: I assumed—I might suggest that these all could be offered at once and the same objection made to all of them at the same time, instead of offering them one at a time.

The Master: Counsel desires to offer them one at a time.

Mr. Healy: All right.

Mr. Sonosky: The Government offers in evidence Plaintiff's Exhibit 52, a telegram dated October 9, 1929.

Mr. Everett: The same objection.

Mr. Healy: May it be understood that we object to all of these as they go in, in order to save time?

The Master: I would rather have a formal objection. The objection will be sustained.

Mr. Sonosky: The Government offers Plaintiff's Exhibit 53, which is at Page 208 from the records of the Com-
[fol. 252] missioner of Public Lands, a telegram dated October 11, 1929, and other notations.

Mr. Everett: The same objection.

The Master: The same ruling. The objection will be sustained.

Mr. Sonosky: The Government offers Plaintiff's Exhibit 54, a letter dated November 1, 1929.

Mr. Everett: The same objection.

The Master: Objection sustained.

Mr. Sonosky: The Government will withdraw Plaintiff's Exhibit 54, if the Court has no objection.

The Master: There is no objection.

Mr. Sonosky: The Government offers Plaintiff's Exhibit 55, a letter dated November 19, 1929.

Mr. Everett: The same objection.

The Master: Objection sustained.

Mr. Sonosky: This one is from The Ohio Oil Company, Your Honor, if that makes any difference.

The Master: It makes no difference in my ruling. Counsel has objected to it?

Mr. Everett: Yes.

The Master: Sustained.

Mr. Sonosky: The Government offers Plaintiff's Exhibit 56, a telegram dated November 20, 1929, and a letter dated December 2, 1929.

[fol. 253] Mr. Everett: The same objection.

The Master: Objection sustained.

Mr. Sonosky: The Government offers Plaintiff's Exhibit 57, a letter dated November 30, 1929.

Mr. Everett: The same objection.

The Master: Objection sustained.

Mr. Sonosky: Let me put it this way: The Government offers the following: Plaintiff's Exhibit 58, a letter dated December 4, 1929, and a letter dated December 6, 1929. I can offer them several at a time, if they all go in the same way.

The Master: Yes, that is what I suggested.

Mr. Sonosky: The Government offers Plaintiff's Exhibit 59, a letter dated December 10, 1929;

Plaintiff's Exhibit 60, two letters, both dated January 16, 1930; both from C. M. Cox, Commissioner, one to the

Attorney General of Wyoming and the other to The Ohio Oil Company;

Plaintiff's Exhibit 61, a letter dated January 28, 1930, and attached enclosures;

Plaintiff's Exhibit 62, a letter dated February 3, 1930;

Plaintiff's Exhibit 63, a letter dated February 10, 1930, from the Commissioner of the General Land Office, Washington;

Plaintiff's Exhibit 64, a letter dated February 19, 1930, [fol. 254] and a record of a telephone call;

Plaintiff's Exhibit 65, a letter dated February 26, 1930, and a letter dated March 5, 1930, both on Page 177.

Now, I request that the reporter be directed to cancel No. 66.

The Master: It may be withdrawn.

Mr. Sonosky: Plaintiff's Exhibit 67, a letter dated April 8, 1930, and a letter dated April 11, 1930, both on Page 173;

Plaintiff's Exhibit 68, two letters, both dated April 19, 1930, both from C. M. Cox, Commissioner, one to The Ohio Oil Company and the other to the Attorney General of Wyoming;

Plaintiff's Exhibit 69, a letter dated May 23, 1930, from C. M. Cox, Commissioner, and a letter dated April 21, 1930, from The Ohio Oil Company;

Plaintiff's Exhibit 70, a letter dated May 27, 1930.

Plaintiff's Exhibit 71 is a canceled number.

Plaintiff's Exhibit 72, notes of a matter presented to the Public Lands Board of the State of Wyoming, on Pages 248, 249 and 250;

Plaintiff's Exhibit 73, a letter dated February 17, 1931, from The Ohio Oil Company;

Plaintiff's Exhibit 74, a letter dated October 12, 1933.

Plaintiff's Exhibit 75, a letter dated October 27, 1933.

[fol. 255] Plaintiff's Exhibit 76, a letter dated October 30, 1933;

Plaintiff's Exhibit 77, a letter dated October 31, 1933;

Plaintiff's Exhibit 78, a letter dated November 1, 1933;

Plaintiff's Exhibit 79, a letter dated November 3, 1933;

Plaintiff's Exhibit 80, a letter dated November 7, 1933;

Plaintiff's Exhibit 81, a letter dated November 22, 1933;

Plaintiff's Exhibit 82, a letter dated November 29, 1933;

Plaintiff's Exhibit 83, a letter dated December 9, 1933, consisting of three pages;

Plaintiff's Exhibit 84, a certified copy of a letter dated January 2, 1935;

Plaintiff's Exhibit 85, a letter dated July 13, 1938;

Plaintiff's Exhibit 86, a letter dated February 8, 1940;

Plaintiff's Exhibit 87, a certified photostat of a letter dated April 27, 1940;

Plaintiff's Exhibit 88, a letter dated June 29, 1942;

[fol. 256] Plaintiff's Exhibit 89, a letter dated January 13, 1943;

Plaintiff's Exhibit 90, an application for mineral lease, dated July 12, 1943, and letter dated July 13, 1943, and a letter dated July 16, 1943; and supplemental application for mineral lease, dated August 28, 1943; and

Plaintiff's Exhibit 91, a photostat of an agreement dated November 16, 1943, and of an oil and gas lease of the same date.

That is all.

Mr. Everett: I understand the exhibits numbered 58 to 91, inclusive, were offered in one group?

The Master: Yes.

Mr. Everett: We wish to object to all of them for the reasons previously stated.

The Master: The objection will be sustained. Have you any further evidence on your objections?

Mr. Sonosky: Just one moment, please.

(Conference.)

Mr. Sonosky: There is no more evidence on that portion of the accounting.

The Master: Have you any other evidence that you desire to offer on any phase of the case? Or would you prefer to hold the case open until tomorrow? I do not insist upon your resting.

[fols. 257-258] Mr. Sonosky: May I have just a few minutes?

(Conference.)

Mr. Sonosky: The Government rests, Your Honor.

The Master: The State of Wyoming?

Mr. Ellery: The State of Wyoming, Your Honor, rests.

The Master: And The Ohio Oil Company?

Mr. Everett: We would like to have a minute for discussion. The Ohio Oil Company rests.

The Master: All parties having rested, now, the question is, how long, Mr. Sonosky, do you want to prepare and file briefs on all phases of the case?

(Conference.)

The Master: Let the record show that Defendants' Exhibit A was checked, as heretofore suggested, and accepted by the Government.

Let the record show that I am allowing plaintiff sixty days to file an opening brief, and the defendants sixty days——

Mr. Sonosky: Sixty days from the date our brief is served on the defendants.

The Master: —sixty days from the date the brief is served on the defendants, in which to file an answering brief; and the Government fifteen days after the service of that brief, in which to file a reply brief.

(Colloquy.)

The Master: The hearing is adjourned sine die.

(Adjournment at 4:40 p. m.)

(Here follow 2 photolithographs, side folios 259-260)

150A

PLAINTIFF'S EXHIBIT 1-A

B-8

8

DEPARTMENT OF THE INTERIOR

UNITED STATES GEOLOGICAL SURVE

WASHINGTON

OFFICE OF THE DIRECTOR

November 23, 1915

The Commissioner,

General Land Office.

In accordance with Departmental instruction of June 18, 1914, I transmit herewith proposed Petroleum Withdrawal No. 41, Wyoming No. 16, to the end that the Secretary may be advised as to the status of the land involved, as shown by the records of your office. This order includes part of the newly discovered Elk Basin field, where intense excitement prevails and new filings are being made daily. It is requested, therefore, that the order be forwarded to the Secretary as soon as possible.

Director.

Inclosure:
Order of withdrawal.

PLAINTIFF'S EXHIBIT 1-B

DEPARTMENT OF THE INTERIOR
UNITED STATES GEOLOGICAL SURVEY
WASHINGTON

OFFICE OF THE DIRECTOR

November 23, 1915

The Honorable,

The Secretary of the Interior.

Sir:

Field investigations by the Geological Survey indicate that the lands in northwestern Wyoming hereinafter listed contain deposits of oil and gas. As these lands are not now in petroleum withdrawal the following order (Petroleum Reserve No. 41, Wyoming No. 16), involving 80,000 acres, is recommended for submission to the President for appropriate action.

Respectfully,

Director.

DEC -3 1915

Respectfully referred to the President with favorable recommendation.

[fol. 261] PLAINTIFF'S EXHIBIT 1-C

ORDER OF WITHDRAWAL

Petroleum Reserve No. 41, Wyoming No. 16

Under and pursuant to the provisions of the act of Congress approved June 25, 1910 (56 Stat., 847), entitled "An act to authorize the President of the United States to make withdrawals of public lands in certain cases," as amended by act of Congress approved August 24, 1912 (37 Stat., 497), and subject to the provisions of the act of Congress approved July 17, 1914 (38 Stat., 509), entitled "An act to provide for agricultural entry of lands withdrawn, classified, or reported as containing phosphate, nitrate, potash, oil, gas, or asphaltic minerals," it is hereby ordered that the lands hereinafter described be, and the same are hereby, withdrawn from settlement, location, sale, or entry, and reserved for classification and in aid of legislation.

Sixth Principal Meridian

T. 56 N., R. 95 W., Sec. 2, lots 1 and 2;
Sec. 3, lots 1 and 2;
Sec. 4, lot 4;
Private land claims 47-A, 48, 49-A, 67, 69, 70-A, 70-B, 71, 109-A, and 109-B.
T. 57 N., R. 95 W., Sec. 22, SE¼;
Sec. 23, 1½;
Sec. 24, S½;
Sec. 25, all;
Sec. 26, all;
Sec. 27, E½;
Sec. 34, E½;
Sec. 35, all;
Sec. 36, all.
T. 57 N., R. 97 W., Secs. 5 to 8, inclusive;
T. 58 N., R. 97 W., Secs. 30 to 32, inclusive.
T. 57 N., R. 98 W., Sec. 1, all;
Sec. 12, all.
T. 58 N., R. 98 W., Secs. 23 to 26, inclusive;
[fols. 262-263] Sec. 36, all.
T. 57 N., R. 99 W., Secs. 4 to 8, inclusive;
Sec. 9, N½, SW¼, W½ of SE¼;

Sec. 16, NW ¼ of NE¼, NW¼, N½ of SW ¼, SW¼ of SW¼;
Sec. 17, all;
Sec. 18, N½, E½ of SE¼, SE¼ of SE¼
Sec. 20, N½ of E½;
Sec. 21, NW¼ of NW¼.

T. 58 N., R. 99 W., Sec. 19, all;
Sec. 20, all;
Sec. 21, SW¼ of NE¼, W½, W½ of SE¼, SE¼ of SE¼;
Secs. 28 to 33, inclusive.

T. 57N., R. 100 W., (unsurveyed) Sec. 1, all;
Sec. 2, E½;
Sec. 11, NE¼ of NE¼;
Sec. 12, N½, E½ of SW¼, SE¼;
Sec. 13, N½ of NE¼, SE¼ of NE¼.

T. 58 N., R. 100 W., (unsurveyed) Sec. 21, NE¼ of NE¼;
Sec. 22, N½, N½ of SW¼, SE¼ of SW¼, SE¼;
Secs. 23 to 26, inclusive;
Sec. 27, NE¼, NE¼ of NW¼, N½ of SE¼, SE¼ of SE¼;
Sec. 34, NE¼ of NE¼;
Sec. 35, N½, E½ of SW¼, SE¼;
Sec. 36, all.

Woodrow Wilson, President.

6 December, 1915.

[fol. 264] PLAINTIFF'S EXHIBIT 2

4-208
(February, 1927)

Oil and Gas Prospecting Permit

Department of the Interior

General Land Office

Land Office and Serial No. Cheyenne 045175

Know All Men By These Presents, That the Secretary of the Interior, under and by virtue of the act of Congress entitled "An act to promote the mining of coal, phosphate,

oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, has granted and does hereby grant a permit under section 13 to R. W. Bennett, Upham, North Dakota, granting him the exclusive right for two years from the date hereof to prospect for oil or gas, but for no other purpose, the following-described lands: W½ NE¼, N½ SE¼ SE¼ SE¼ Sec. 23; W½ NW¼, SE¼ NW¼, SW¼, W½ SE¼ (except NE¼ NE¼ NW¼ SE¼) Sec. 25; W½ NE¼, SE¼ Sec. 36, T. 58 N., R. 100 W., 6th P. M., Wyoming, containing 797.50 acres, upon the express conditions following:

1. To mark each of the corners of the claim within ninety days from date hereof with substantial monuments so that the boundaries can be readily traced on the ground, and post in a conspicuous place, upon the lands covered hereby, a notice that such a permit has been granted, and a description of the lands covered by this permit.

2. Within six months from date hereof to install upon some portion of the lands a substantial and adequate drilling outfit capable of effective drilling to an objective oil or gas horizon and to begin actual drilling operations in conformity with paragraph 6 hereof and the operating regulations.

3. Within one year from date hereof to drill at least one well in conformity with paragraph 6 hereof and the operating regulations to a depth of 500 feet, unless valuable deposits of oil or gas shall be discovered at a less depth.

4. Within two years of date hereof to drill at least one well in conformity with paragraph 6 hereof and the operating regulations to a depth of 2,000 feet, unless valuable deposits of oil or gas shall be discovered at a less depth.

5. Not to drill any well within 200 feet of any of the outer boundaries of the land covered by this permit, except as may be necessary to protect against offset wells on lands the oil and gas title to which is not held by the United States.

6. To file with the representative of the Secretary of the Interior (Supervisor, oil and gas operations, U. S. Geological Survey), a separate notice of intention to drill embodying the drilling plan of each well, and not to begin drilling until the plan has been approved; to carry on all opera-

tions hereunder in accordance with approved methods and practice and in conformity with the operating regulations to the satisfaction of said representative; to carry out, at the expense of the permittee, all reasonable orders of the Secretary of the Interior, or his authorized representatives, issued in pursuance of said operating regulations; to take all reasonable precautions to prevent waste of oil or gas, damage to formations or deposits bearing oil or gas or water, or to coal measures or other mineral deposits, injury to life or property, or economic waste; and to repair promptly, so far as possible, any damage to mineral deposits or mineral bearing formations resulting from his operations.

7. To maintain if required during the period of this permit, including all extensions thereof, a bond with a qualified corporate surety, in the sum of $1,000 or such other amount as the Secretary of the Interior may at any time require: (a) to reimburse damage sustained by any reclamation homestead entryman, pursuant to the requirements of paragraph 8 hereof; (b) to pay any damage caused to any reclamation project or the water supply thereof, by failure to comply fully with the requirements of paragraphs 9 and 10 hereof; (c) to reimburse nonmineral applicant, entryman, or patentee for all damage to crops or tangible improvements caused by drilling or other prospecting operations where any of the lands covered by this permit are embraced in any nonmineral application, entry, or patent, with a reservation of the oil and gas deposits to the United States, pursuant to the act of July 17, 1914 (38 Stat., 509), under rights initiated prior to the application for permit. To furnish before approval of the first notice of intention to drill a well on the permit area and to maintain thereafter during the period of the permit, including all extensions thereof, a drilling bond with qualified corporate surety in the sum of $5,000 conditioned against the failure of the permittee to comply with the provisions of paragraph 6 hereof.

8. That as to any lands covered by this permit which are also embraced in any reclamation homestead entry heretofore or hereafter made with a reservation of the oil and gas to the United States, permittee shall reimburse the entryman for all damage to crops or improvements caused by such drilling or other operations, such damage to include reimbursements of the entryman by the permittee, of all

reclamation charges for construction, operation, and maintenance for the portion of the land used and occupied by the permittee during the period of such use and occupation.

[fols. 265-266] 9. That as to any lands covered by this permit within the area of any Government reclamation project or in proximity thereto the permittee shall erect such dikes and embankments or take such other precautions as may be necessary as required by the project superintendent, effectively to impound any flow of refuse oil, salt water, or oil from wells drilled, to prevent any injury to lands susceptible of irrigation under such project or injury to the water supply thereof: Provided, further, That the permittee is prohibited from drilling upon any constructed works of the Bureau of Reclamation or right of way therefor.

10. That if any of the land covered by this permit is embraced in a forest, reclamation, power, or other withdrawal, or is segregated for any particular purpose, operations under this permit shall be so conducted as not to interfere with the administration and use of the land for the purpose for which withdrawn or segregated to a greater extent than may be determined by the Secretary of the Interior to be necessary for the most beneficial use of the land, and on the further condition that in the event of discovery of oil or gas within the permit area, appropriate conditions for the protection of the uses and purposes for which the land is withdrawn or segregated may be incorporated in any lease or leases which may be issued.

11. That pursuant to section 1 of the act, the ownership of and the right to take all helium from any gas discovered under this permit in a manner and under such rules and regulations as may be prescribed by the Secretary of the Interior, is hereby reserved.

12. That no standing timber upon the land covered by this permit will be used for fuel in drilling operations unless and until application therefor is made and approved in accordance with the regulations of January 11, 1926, circular No. 1048 (51 L. D., 311), or subsequent relations pertaining thereto.

13. That the right is reserved to the Secretary of the Interior to permit upon such terms as he may determine to be just, for joint or several use, such easements, or rights of

way, including easements in tunnels upon, through, or in the lands covered hereby, as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in the act under which this permit is granted.

14. That the granting of this permit shall not preclude the allowance of entry, location, or selection of any of the lands included therein, where such entry, selection or location is made with a reservation of the mineral deposits to the United States.

15. That until this permittee shall apply for a lease to one-quarter or more of the area included herein, he shall pay to the United States 20 percent of the gross value of all oil or gas secured by him from the lands and sold or otherwise disposed of, or held by him for sale or other disposition.

16. That application for lease based on a claim of discovery of oil or gas under this permit shall set forth in detail the operations that have been conducted and the amount and value of the discovery claimed to have been made; and must include a certificate by the representative of the Secretary of the Interior authorized to supervise operations under this permit to the effect that the permittee has conducted his prospecting operations in accordance with approved methods and practice and has made satisfactory compliance with the operating regulations; that each and every well drilled on the permit area is in a satisfactory condition; and that the well or wells relied upon for evidence of discovery have been put in condition for operation and thereafter tested adequately for productive capacity.

17. The Secretary of the Interior reserves the right and authority to cancel this instrument for failure of the permittee to comply with any of the conditions enumerated herein or to exercise due diligence in the work of development.

Valid rights existing at the date of this permit will not be affected hereby. Dated Feb. 25, 1928.

E. C. Finney, First Assistant Secretary of the Interior.

[fol. 267] PLAINTIFF'S EXHIBIT 3

4-208

(February, 1927)

Oil and Gas Prospecting Permit

Department of the Interior

General Land Office

Land Office and Serial No. Cheyenne 047383

Know all men by these presents, That the Secretary of the Interior, under and by virtue of the act of Congress entitled "An act to promote the mining of coal, phosphate, oil, oil shale, gas, and sodium on the public domain," approved February 25, 1920, has granted and does hereby grant a permit under section 13 to Edith Merrill, Bridger, Montana, granting her the exclusive right for two years from the date hereof to prospect for oil or gas, but for no other purpose, the following-described lands: All Sec. 1; NE¼ NE¼ Sec. 11; N½ NE¼, SE¼ NE¼ Sec. 13, T. 57 N.; Lots 3 and 4, S½ NW¼, SW¼, SW¼ SE¼ Sec. 23; E½ Sec. 26; W½ Sec. 36, T. 58 N., all in R. 100 W., 6th P. M., Wyoming, containing 1757.38 acres, upon the express conditions following:

1. To mark each of the corners of the claim within ninety days from date hereof with substantial monuments so that the boundaries can be readily traced on the ground, and post in a conspicuous place, upon the lands covered hereby, a notice that such a permit has been granted, and a decription of the lands covered by this permit.

2. Within six months from date hereof to install upon some portion of the lands a substantial and adequate drilling outfit capable of effective drilling to an objective oil or gas horizon and to begin actual drilling operations in conformity with paragraph 6 hereof and the operating regulations.

3. Within one year from date hereof to drill at least one well in conformity with paragraph 6 hereof and the operating regulations to a depth of 500 feet, unless valuable deposits of oil or gas shall be discovered at a less depth.

4. Within two years of date hereof to drill at least one well in conformity with paragraph 6 hereof and the operating regulations to a depth of 2,000 feet, unless valuable deposits of oil or gas shall be discovered at a less depth.

5. Not to drill any well within 200 feet of any of the outer boundaries of the land covered by this permit, except as may be necessary to protect against offset wells on lands the oil and gas title to which is not held by the United States.

6. To file with the representative of the Secretary of the Interior (Supervisor, oil and gas operations, U. S. Geological Survey), a separate notice of intention to drill embodying the drilling plan of each well, and not to begin drilling until the plan has been approved; to carry on all operations hereunder in accordance with approved methods and practice and in conformity with the operating regulations to the satisfaction of said representative; to carry out, at the expense of the permittee, all reasonable orders of the Secretary of the Interior, or his authorized representatives, issued in pursuance of said operating regulations; to take all reasonable precautions to prevent waste of oil or gas, damage to formations or deposits bearing oil or gas or water, or to coal measures or other mineral deposits, injury to life or property, or economic waste; and to repair promptly, so far as possible, any damage to mineral deposits or mineral bearing formations resulting from his operations.

7. To maintain if required during the period of this permit, including all extensions thereof, a bond with a qualified corporate surety, in the sum of $1,000 or such other amount as the Secretary of the Interior may at any time require: (a) to reimburse damage sustained by any reclamation homestead entryman, pursuant to the requirements of paragraph 8 hereof; (b) to pay any damage caused to any reclamation project or the water supply thereof, by failure to comply fully with the requirements of paragraphs 9 and 10 hereof; (c) to reimburse nonmineral applicant, entryman, or patentee for all damage to crops or tangible improvements caused by drilling or other prospecting operations where any of the lands covered by this permit are embraced in any nonmineral application, entry, or patent, with a reservation of the oil and gas deposits to the United States, pursuant to the act of July 17, 1914 (38 Stat., 509), under rights initiated prior to the application for permit. To fur-

nish before approval of the first notice of intention to drill a well on the permit area and to maintain thereafter during the period of the permit, including all extensions thereof, a drilling bond with qualified corporate surety in the sum of $5,000 conditioned against the failure of the permittee to comply with the provisions of paragraph 6 hereof.

8. That as to any lands covered by this permit which are also embraced in any reclamation homestead entry heretofore or hereafter made with a reservation of the oil and gas to the United States, permittee shall reimburse the entryman for all damage to crops or improvements caused by such drilling or other operations, such damage to include reimbursements of the entryman by the permittee, of all reclamation charges for construction, operation, and maintenance for the portion of the land used and occupied by the permittee during the period of such use and occupation.

[fols. 268-269] 9. That as to any lands covered by this permit within the area of any Government reclamation project or in proximity thereto the permittee shall erect such dikes and embankments or take such other precautions as may be necessary as required by the project superintendent, effectively to impound any flow of refuse oil, salt water, or oil from wells drilled, to prevent any injury to lands susceptible of irrigation under such project or injury to the water supply thereof: Provided, further, That the permittee is prohibited from drilling upon any constructed works of the Bureau of Reclamation or right of way therefor.

10. That if any of the land covered by this permit is embraced in a forest, reclamation, power, or other withdrawal, or is segregated for any particular purpose, operations under this permit shall be so conducted as not to interfere with the administration and use of the land for the purpose for which withdrawn or segregated to a greater extent than may be determined by the Secretary of the Interior to be necessary for the most beneficial use of the land, and on the further condition that in the event of discovery of oil or gas within the permit area, appropriate conditions for the protection of the uses and purposes for which the land is withdrawn or segregated may be incorporated in any lease or leases which may be issued.

11. That pursuant to section 1 of the act, the ownership of and the right to take all helium from any gas discovered

under this permit in a manner and under such rules and regulations as may be prescribed by the Secretary of the Interior, is hereby reserved.

12. That no standing timber upon the land covered by this permit will be used for fuel in drilling operations unless and until application therefor is made and approved in accordance with the regulations of January 11, 1926, circular No. 1048 (51 L. D., 311), or subsequent relations pertaining thereto.

13. That the right is reserved to the Secretary of the Interior to permit upon such terms as he may determine to be just, for joint or several use, such easements, or rights of way, including easements in tunnels upon, through, or in the lands covered hereby, as may be necessary or appropriate to the working of the same, or of other lands containing the deposits described in the act under which this permit is granted.

14. That the granting of this permit shall not preclude the allowance of entry, location, or selection of any of the lands included therein, where such entry, selection or location is made with a reservation of the mineral deposits to the United States.

15. That until this permittee shall apply for a lease to one-quarter or more of the area included herein, he shall pay to the United States 20 per cent of the gross value of all oil or gas secured by him from the lands and sold or otherwise disposed of, or held by him for sale or other disposition.

16. That application for lease based on a claim of discovery of oil or gas under this permit shall set forth in detail the operations that have been conducted and the amount and value of the discovery claimed to have been made; and must include a certificate by the representative of the Secretary of the Interior authorized to supervise operations under this permit to the effect that the permittee has conducted his prospecting operations in accordance with approved methods and practice and has made satisfactory compliance with the operating regulations; that each and every well drilled on the permit area is in a satisfactory condition; and that the well or wells relied upon for evidence of discovery have been put in condition for opera-

tion and thereafter tested adequately for productive capacity.

17. The Secretary of the Interior reserves the right and authority to cancel this instrument for failure of the permittee to comply with any of the conditions enumerated herein or to exercise due diligence in the work of development.

Valid rights existing at the date of this permit will not be affected hereby.

Dated Feb. 19, 1929.

E. C. Finney, First Assistant Secretary of the Interior.

[fol. 270] PLAINTIFF'S EXHIBIT 4

4-208 f May 1936

United States Department of the Interior

General Land Office

Serial Cheyenne 060973

Lease of Oil and Gas Lands Under the Act of February 25, 1920, as Amended

This indenture of lease, entered into, in triplicate, as of the 27th day of October 1938, by and between the United States of America, party of the first part, hereinafter called the lessor, by the Secretary of the Interior, and Jacob A. Watson, Frannie, Wyoming, party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the act of Congress approved February 25, 1920 (41 Stat. 437), entitled "An Act to Promote the Mining of Coal, Phosphate, Oil, Oil Shale, Gas, and Sodium on the Public Domain", as amended, hereinafter referred to as the Act, which is made a part hereof, Witnesseth:

Sec. 1. *Rights of Lessee.*—That the lessor in consideration of rents and royalties to be paid, and the conditions and covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits in or under the following-

described tracts of land not within known geologic structure of any producing oil or gas field and more particularly described as follows:

T. 58 N., R. 100 W., 6th P.M., Wyoming: Sec. 36, W½ NE¼, SE¼, containing 240 acres, more or less, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, roads, telegraph or telephone lines, pipe lines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment thereof, for a period of five years, and so long thereafter as oil or gas is produced in paying quantities.

Sec. 2. In consideration of the foregoing, *the lessee hereby agrees*:

(a) *Bond.*— To furnish prior to beginning of drilling operations and maintain at all times thereafter as required by the lessor a bond in the penal sum of $5,000 with approved corporate surety, or with deposit of United States bonds as surety therefor, conditioned upon compliance with the terms of this lease; and, until such bond is furnished, to submit and maintain a bond in the sum of $1,000 with acceptable surety, similarly conditioned.

[fol. 271] (b) Within 30 days of demand, to subscribe to and to operate under such reasonable cooperative or unit plan for the development and operation of the area, field or pool embracing the lands included herein as the Secretary of the Interior may determine to be practicable and necessary or advisable, which plan shall adequately protect the rights of all parties in interest, including the United States.

(c) *Wells.*—(1) To drill and produce all wells necessary to protect the leased land from drainage by wells on lands not the property of the lessor or lands of the United States leased at a lower royalty rate, or in lieu of any part of such drilling and production, with the consent of the Secretary of the Interior, to compensate the lessor in full each month for the estimated loss of royalty through drainage in the amount determined under instructions of said Secretary; (2) at the election of the lessee, to drill and produce other wells in conformity with any system of well spacing or production allotments affecting the field or area in which the leased lands are situated, provided such system is authorized and sanctioned by applicable law or by the Sec-

retary of the Interior; and (3) promptly after due notice in writing, to drill and produce such other wells as the Secretary of the Interior may require to insure reasonable diligence in the development and operation of the property.

(d) *Rentals.*—To pay the lessor in advance for each acre or fraction thereof, a rental of 50 cents for the first lease year beginning on the first day of the month in which the lease issues, and a rental of 25 cents for each subsequent lease year beginning prior to discovery of a valuable deposit of oil or gas within the limits of the geologic structure on which all or part of the leased lands are situated, and one dollar for each lease year beginning on or after such discovery, the rental so paid for any one lease year to be credited on the royalty for that year: *Provided,* That if this lease is granted in exchange for an oil and gas prospecting permit or pursuant to an application for a prospecting permit filed after May 23, 1935, no rental shall be payable for the first two lease years unless valuable deposits of oil or gas are sooner discovered within the boundaries of the lease, but a rental of one dollar shall be payable, as above provided, for each lease year beginning on or after such discovery: *And provided further,* That when the Secretary of the Interior shall direct or shall assent to suspension of operations or of production of oil or gas under this lease, after a valuable deposit of oil or gas shall have been discovered within the lands leased, any payment of acreage rental prescribed herein likewise shall be suspended during such period of suspension of all operations and production; and this lease shall not be deemed to expire by reason of suspension of prospecting, drilling, or production, pursuant to any order or consent of the said Secretary.

(e) *Royalties.*—To pay the lessor royalties, as follows, on the amount or value of all production from the leased lands (except that portion thereof used for production purposes on said lands or unavoidably lost):

(1) When the price of oil used in computing royalty value is $1.00 or more per barrel, the per centum of royalty shall be as follows:

When the average production for the calendar month in barrels per well per day is

not over		50,	the royalty shall be 12.5 percent;
over 50	but not over	60,	the royalty shall be 13 percent;

over	60	but not over	70,	the royalty shall be	14	percent;
over	70	but not over	80,	the royalty shall be	15	percent;
over	80	but not over	90,	the royalty shall be	16	percent;
over	90	but not over	110,	the royalty shall be	17	percent;
over	110	but not over	130,	the royalty shall be	18	percent;
over	130	but not over	150,	the royalty shall be	19	percent;
over	150	but not over	200,	the royalty shall be	20	percent;

[fol. 272]

over	200	but not over	250,	the royalty shall be	21	percent;
over	250	but not over	300,	the royalty shall be	22	percent;
over	300	but not over	350,	the royalty shall be	23	percent;
over	350	but not over	400,	the royalty shall be	24	percent;
over	400	but not over	450,	the royalty shall be	25	percent;
over	450	but not over	500,	the royalty shall be	26	percent;
over	500	but not over	750,	the royalty shall be	27	percent;
over	750	but not over	1000,	the royalty shall be	28	percent;
over	1000	but not over	1250,	the royalty shall be	29	percent;
over	1250	but not over	1500,	the royalty shall be	30	percent;
over	1500	but not over	2000,	the royalty shall be	31	percent;
over	2000			the royalty shall be	32	percent.

(2) When the price of oil used in computing royalty value is less than $1.00 per barrel, the per centum of royalty shall be the foregoing multiplied by the ratio of said price to a price of $1.00 per barrel, provided, however, that the per centum of royalty shall never be less than 12.5.

(3) If the United States shall take its royalty in oil, the price received by the lessee, as well as that received by the lessor shall be considered in determining the price to govern the per centum of royalty, unless both prices are $1.00 or more per barrel.

(4) On gas, including inflammable gas, helium, carbon dioxide and all other natural gases and mixtures thereof, and on natural or casing-head gasoline and other liquid products obtained from gas:

When the average production of gas per well per day for the calendar month does not exceed 5,000,000 cubic feet, 12½ percent; and when said production of gas exceeds 5,000,000 cubic feet, 16⅔ percent of the amount or value of the gas and liquid products produced, said amount or value of such liquid products to be net after an allowance for the cost of manufacture: *Provided*, That the allowance for cost of manufacture may exceed two-thirds of the amount or value of any product only on approval by the Secretary of the Interior, and that said value of gas and of liquid products shall be as determined by said Secretary.

The average production per well per day for oil and for gas shall be determined under rules and regulations approved by the Secretary of the Interior.

(5) It is expressly agreed that the Secretary of the Interior may establish reasonable minimum prices for purposes of computing royalty in value on any or all oil, gas, natural gasoline and other liquid products obtained from gas; and that in no case shall the price so established be less than the estimated reasonable value of the product, due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters.

(6) When paid in value, such royalties on production shall be due and payable monthly on the last day of the calendar month next following the calendar month in which produced. When paid in amount of production, such royalty products shall be delivered in merchantable condition on the premises where produced without cost to lessor, unless otherwise agreed to by the parties hereto, at such times, and in such tanks provided by the lessee as reasonably may be required by the lessor: *Provided,* That the lessee shall not be required to hold such royalty oil or other liquid products in storage beyond the last day of the calendar month next following the calendar month in which produced: *And provided further,* That the lessee shall be in no manner responsible or held liable for the loss or destruction of royalty oil or other liquid products in storage from causes over which the lessee has no control. [fol. 273] (7) Royalties, whether in amount or value of production, shall be subject to reduction whenever the average daily production of the oil wells on the entire leasehold or on any tract or portion thereof segregated for royalty purposes shall not exceed ten (10) barrels per well per day, or where the cost of production of oil or gas is such as to render further production economically impracticable, if in the judgment of the Secretary of the Interior the wells can not be successfully operated upon the royalties fixed herein.

(f) *Contracts for disposal of products.*—To file with the Federal oil and gas supervisor or such other officer as the Secretary of the Interior may designate, copies of all contracts immediately upon execution thereof, and full in-

formation as to all other arrangements for the disposal of oil, gas, natural gasoline and other products produced hereunder (except products used for production purposes on the leased lands or unavoidably lost), and not to sell or otherwise dispose of the products of the land leased except in accordance with a contract or other arrangement first approved by said officer, such approval to be subject to review by the Secretary of the Interior but to be effective unless and until revoked by said Secretary or his said subordinate.

(g) *Monthly statements.*—To furnish monthly statements in detail at such time and in such form as may be prescribed by the lessor, showing the amount, and quality of all oil, gas, natural gasoline and other substances produced during the preceding calendar month and the amounts thereof used for production purposes on the leased lands or unavoidably lost, and to furnish current records and monthly statements of the amounts thereof sold or otherwise disposed of and the proceeds therefrom.

(h) *Payments.*—Unless otherwise directed by the Secretary of the Interior, to make rental, royalty or other payments to the lessor to the order of the Commissioner, General Land Office, such payments to be tendered to the Federal oil and gas supervisor of the district in which the leased land is situated.

(i) *Inspection.*—To keep open at all reasonable times for the inspection of any duly authorized officer of the Department, the leased premises and all wells, improvements, machinery, and fixtures thereon or connected therewith and all books, accounts, maps, and records relative to operations and surveys or investigations on the leased lands or under the lease.

(j) *Plats and reports.*—To furnish at such times and in the manner and form prescribed by or on behalf of the lessor, a plat showing all development work and improvements on the leased lands, and other related information, with a report as to all buildings, structures, or other works placed in or upon said leased lands; and to report in detail when required as to the stockholders, investment, depreciation, and cost of operation, and the amount, nature and quality of products sold, and the amount received therefor.

(k) *Well Records.*—To keep a daily drilling record, a log and complete information on all well surveys in form acceptable to or prescribed by or on behalf of the lessor of all the wells drilled on the leased lands, and an acceptable record of all subsurface investigations affecting said lands, which log, information, and records, or copies thereof, shall be furnished to the lessor as requested or required.

(l) *Diligence.—Prevention of waste—Health and safety of workmen.*—To exercise reasonable diligence in drilling and producing the wells herein provided for unless consent to suspend operations temporarily is granted by the Secretary of the Interior; to carry on all operations hereunder in a good and workmanlike manner, in accordance with approved methods and practice as provided in the operating regulations, having due regard for the prevention of waste of oil or gas developed or damage to deposits or formations containing oil, gas, or water or to coal measures or other mineral deposits, for conservation of gas energy, for [fol 274] the preservation and conservation of the property for future productive operations, and for the health and safety of workmen and employees; to plug properly and effectively all wells before abandoning the same; not to drill any well within 200 feet of any of the outer boundaries of the lands covered hereby, unless the adjoining lands have been patented or the title thereto otherwise vested in private owners; to carry out at expense of the lessee all reasonable orders of the lessor relative to the matters in this paragraph, and that on failure of the lessee so to do the lessor shall have the right to enter on the property and to accomplish the purpose of such orders at the lessee's cost: *Provided*, That the lessee shall not be held responsible for delays or casualties occasioned by causes beyond lessee's control.

(m) *Regulations.*—To abide by and conform to any and all reasonable regulations of the Secretary of the Interior now or hereafter in force, all of which regulations are made a part and condition of this lease: *Provided*, That such regulations are not inconsistent with any express and specific provisions hereof; and particularly that no regulations hereafter approved shall affect a change in the rate of royalty or annual rental herein specified without the written consent of the parties to this lease.

(n) *Taxes and wages—Freedom of Purchase.*—To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil, and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchase, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States.

(o) *Reserved deposits.*—To comply with all statutory requirements and regulations thereunder, if the lands embraced herein have been or shall hereafter be disposed of under the laws reserving to the United States the deposits of oil and gas therein, subject to such conditions as are or may hereafter be provided by the laws reserving such oil or gas.

(p) *Assignment of Lease.*—Not to assign this lease or any interest therein by an operating agreement or otherwise, nor to sublet any portion of the leased premises, except with the consent in writing of the Secretary of the Interior first had and obtained.

(q) *Deliver premises in cases of forfeiture.*—To deliver up the premises leased, with all permanent improvements thereon, in good order and condition in case of forfeiture of this lease; but this shall not be construed to prevent the removal, alteration, or renewal of equipment and improvements in the ordinary course of operations.

(r) *Pipe lines to purchase or convey at reasonable rates and without discrimination.*—If owner, or operator or owner of a controlling interest in any pipe line or of any company operating the same which may be operated accessible to the oil or gas derived from lands under this lease, to accept and convey and, if a purchaser of such products, to purchase at reasonable rates and without discrimination the oil or gas of the Government or of any citizen or company not the owner of any pipe line, operating a lease or purchasing or selling oil, gas, natural gasoline or other products under the provisions of the Act.

(s)—If any of the land included in this lease is embraced in a forest, reclamation, power, or other withdrawal, or is segregated for any particular purpose, to so conduct operations as not to interfere with the administra-

tion and use of the land for the purpose for which withdrawn or segregated.

Sec. 3. The lessor expressly reserves:

(a) *Rights reserved—Easements and rights of way.*—The right to permit for joint or several use easements or rights of way, including easements in tunnels upon, through or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same or of other lands containing the deposits described in the Act, and the treatment and shipment of products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

[fol. 275] (b) *Disposition of surface.*—The right to lease, sell or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted, insofar as said surface is not necessary for the use of the lessee in the extraction and removal of the oil and gas therein: *Provided,* That this reservation shall not apply to any lands herein described, title to which has passed from the United States.

(c) *Monopoly and fair prices.*—Full power and authority to promulgate and enforce all orders necessary to insure the sale of the production of the leased lands to the United States and to the public at reasonable prices, to protect the interests of the United States, to prevent monopoly, and to safeguard the public welfare.

(d) *Helium.*—Pursuant to Section 1 of the Act, and Section 1 of the act of Congress approved March 3, 1927 (44 Stat. 1387), the lessor reserves the ownership and the right to extract, under such rules and regulations as shall be prescribed by the Secretary of the Interior, helium from all gas produced under this lease, but the lessee shall not be required to extract and save the helium for the lessor; in case the lessor elects to take the helium the lessee shall deliver all gas containing same, or portion thereof desired, to the lessor at any point on the leased premises in the manner required by the lessor, for the extraction of the helium in such plant or reduction works for that purpose as the lessor may provide, whereupon the residue shall be returned to the lessee with no substantial delay in the delivery of gas produced from the well to the purchaser thereof:

Provided, That the lessee shall not, as a result of the operation in this paragraph provided for, suffer a diminution of value of the gas from which the helium has been extracted, or loss otherwise, for which the lessee is not reasonably compensated, save for the value of the helium extracted; the lessor further reserves the right to erect, maintain, and operate any and all reduction works and other equipment necessary for the extraction of helium on the premises leased.

(e) *Taking of Royalties.*—All rights pursuant to section 36 of the Act to take royalties in amount or in value of production.

(f) *Casing.*—All rights pursuant to section 40 of the Act, to purchase casing and lease or operate valuable water wells.

Sec. 4. *Drilling and producing restrictions.*—It is covenanted and agreed that the rate of prospecting and developing and the quantity and rate of production from the lands covered by this lease shall be subject to control in the public interest by the Secretary of the Interior, and in the exercise of his judgment the Secretary may take into consideration, among other things, Federal laws, State laws, and regulations issued thereunder, or lawful agreements among operators regulating either drilling or production, or both.

Sec. 5. *Surrender and termination of lease.*—The lessee may, on consent of the Secretary of the Interior, first had and obtained in writing, surrender and terminate this lease upon payment of all rents, royalties, and other obligations due and payable to the lessor, and upon payment of all wages and moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary that the public interest will not be impaired; but in no case shall such termination be effective until the lessee shall have made full provision for conservation and protection of the property; upon like consent had and obtained the lessee may surrender any legal subdivisions of the area included herein.

Sec. 6. *Purchase of materials, etc., on termination of lease.*—Upon the expiration of this lease, or the earlier termination thereof pursuant to the last preceding section, the lessor or another lessee may, if the lessor shall so elect

within three months from the termination of the lease pur- [fols. 276-277] chase all materials, tools, machinery, appliances, structures, and equipment placed in or upon the land by the lessee, and in use thereon as a necessary or useful part of an operating or producing plant, on the payment to the lessee of such sum as may be fixed as a reasonable price therefor by a board of three appraisers, one of whom shall be chosen by the lessor, one by the lessee, and the other by the two so chosen; pending such election all equipment shall remain in normal position. If the lessor, or another lessee, shall not within three months, elect to purchase all or any part of such materials, tools, machinery, appliances, structures and equipment, the lessee shall have the right at any time, within a period of ninety days, to remove from the premises all the materials, tools, machinery, appliances, structures, and equipment which the lessor shall not have elected to purchase, save and except casing in wells and other equipment or apparatus necessary for the preservation of the well or wells. Any materials, tools, machinery, appliances, structures, and equipment including casing in or out of wells on the leased lands shall become the property of the lessor on expiration of the period of ninety days above referred to or such extension thereof as may be granted on account of adverse climatic conditions throughout said period.

Sec. 7. *Proceedings in case of default.*—If the lessee shall fail to comply with the provisions of the Act, or make default in the performance or observance of any of the terms, covenants, and stipulations hereof and such default shall continue for a period of 30 days after service of written notice thereof by the lessor, the lease may be canceled by the Secretary of the Interior in accordance with section 17 of the Act, as amended, and all materials, tools, machinery, appliances, structures, equipment and wells shall thereupon become the property of the lessor, except that if said lease was earned as a preference right pursuant to section 14 of the Act or covers lands known to contain valuable deposits of oil or gas, the lease may be canceled only by judicial proceedings in the manner provided in section 31 of the Act; but this provision shall not be construed to prevent the exercise by the lessor of any legal or equitable remedy which the lessor might otherwise have. A waiver of any particular cause of forfeiture shall not prevent the

cancellation and forfeiture of this lease for any other cause of forfeiture, or for the same cause occurring at any other time.

Sec. 8. *Heirs and successors in interest.*—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 9. *Unlawful interest.*—It is also further agreed that no Member of, or Delegate to Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior, shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom; and the provisions of section 3741 of the Revised Statutes of the United States, and sections 114, 115, and 116 of the Codification of the Penal Laws of the United States approved March 4, 1919 (35 Stat., 1109), relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

The United States of America, by Harry ——, Acting Secretary of the Interior; Jacob A. Watson.

In Witness Whereof:

Witness to signature of Jacob A. Watson. W. T. Brown, Frannie, Wyo.; E. J. Nethery, Frannie, Wyo.

[fol. 278] PLAINTIFF'S EXHIBIT 5

4-208 f (September 1940)

United States Department of the Interior

General Land Office

Serial Cheyenne 065711

Lease of Oil and Gas Lands Under the Act of February 25, 1920, as Amended

This Indenture of lease, entered into, in triplicate, as of the 1st day of March 1943 by and between the United States of America, party of the first part, hereinafter

called the lessor, by the Secretary of the Interior, and F. G. Nason, 242 Avenue D, Billings, Montana, party of the second part, hereinafter called the lessee, under, pursuant, and subject to the terms and provisions of the act of Congress approved February 25, 1920 (41 Stat. 437), entitled "An Act to Promote the Mining of Coal, Phosphate, Oil, Oil Shale, Gas, and Sodium on the Public Domain," as amended, hereinafter referred to as the Act, which is made a part hereof, Witnesseth:

Section 1. *Rights of lessee.*—That the lessor, in consideration of rents and royalties to be paid, and the conditions and covenants to be observed as herein set forth, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove, and dispose of all the oil and gas deposits in or under the following-described tracts of land not within a known geologic structure of any producing oil or gas field, and more particularly described as follows:

T. 58 N., R. 100 W., 6 P.M., Wyoming, Sec. 26, W½SE¼, Sec. 36, W½; T. 57 N., R. 100 W., 6 P.M., Wyoming, Sec 1, Lots 1, 2, S½NE¼, SE¼; containing 719.67 acres, more or less, together with the right to construct and maintain thereupon all works, buildings, plants, waterways, roads, telegraph or telephone lines, pipe lines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment thereof, for a period of five years, and so long thereafter as oil or gas is produced in paying quantities; subject to any unit agreement heretofore or hereafter approved by the Secretary of the Interior, the provisions of said agreement to govern to the extent of the lands subject thereto where inconsistencies with the terms of this lease occur.

Sec. 2. In consideration of the foregoing, *the lessee hereby agrees*:

(a) *Bond.*—To furnish prior to beginning of drilling operations and maintain at all times thereafter as required by the lessor a bond in the penal sum of $5,000 with approved corporate surety, or with deposit of United States bonds as surety therefor, conditioned upon compliance with the terms of this lease; and, until such bond is furnished, to submit and maintain a bond in the sum of $1,000 with acceptable surety, similarly conditioned. The requirement

made herein for the filing of a $1,000 bond shall apply only in those cases in which a bond is required by law for the protection of the owners of surface rights. In all other cases the $1,000 bond must be filed not less than 90 days before the due date of the next unpaid annual rental, but this requirement may be successively dispensed with by making payment of each successive annual rental not less than 90 days prior to its due date. In the absence of the payment of the rental in advance as herein authorized, the requirement for the filing of the bond within the time prescribed must be complied with strictly, and upon the failure of the lessee to comply therewith the lease shall be subject to cancellation by the Secretary in accordance with the provisions of the lease and the Act of February 25, 1920 (41 Stat. 437), as amended by the Act of August 21, 1935 (49 Stat. 674). Nothing herein contained shall operate to relieve the lessee from the obligation to furnish a $5,000 general lease bond prior to beginning drilling operations.

(b) *Cooperative or unit plan.*—Within 30 days of demand, or if the land is within an approved unit plan, in the event such plan is terminated prior to the expiration of this lease, within 30 days of demand made thereafter, to subscribe to and to operate under such reasonable cooperative or unit plan for the development and operation of the area, field, or pool embracing the lands included herein as the Secretary of the Interior may determine to be practicable and necessary or advisable, which plan shall adequately protect the rights of all parties in interest, including the United States.

(c) *Wells:* (1) To drill and produce all wells necessary to protect the leased land from drainage by wells on lands not the property of the lessor or lands of the United States leased at a lower royalty rate, or in lieu of any part of such drilling and production, with the consent of the Secretary of the Interior, to compensate the lessor in full each month for the estimated loss of royalty through drainage in the amount determined under instructions of said Secretary; (2) at the election of the lessee, to drill and produce other wells in conformity with any system of well spacing or production allotments affecting the field or area in which the leased lands are situated, provided such system is authorized and sanctioned by applicable law or by the Secre-

tary of the Interior; and (3) promptly after due notice in writing, to drill and produce such other wells as the Secretary of the Interior may require to insure reasonable diligence in the development and operation of the property.

[fol. 279] (d) *Rentals.*—To pay the lessor in advance on the first day of the month in which the lease issues a rental of 50 cents for each acre or fraction thereof for the first lease year, and a rental of 25 cents for each subsequent lease year beginning prior to discovery of a valuable deposit of oil or gas within the limits of the geological structure on which all or part of the leased lands are situated: *Provided,* That if this lease is granted under section 17 of the act, as amended, for lands not within any known geologic structure of a productive oil or gas field, no rental is required for the second and third lease years unless a valuable deposit of oil or gas is sooner discovered: *Provided further,* That if this lease is granted in exchange for an oil and gas prospecting permit or pursuant to an application for a prospecting permit filed after May 23, 1935, no rental shall be payable for the first two lease years unless valuable deposits of oil or gas are sooner discovered within the boundaries of the lease, but a rental of 25 cents shall be paid for the third and each succeeding lease year beginning prior to discovery of a valuable deposit of oil or gas within the limits of the geologic structure on which all or part of the leased lands are situated: *Provided further,* That for each lease year beginning on or after discovery a rental of $1 per acre or fraction thereof shall be paid, the rental so paid for any one lease year to be credited on the royalty for that year: *And provided further,* That when the Secretary of the Interior shall direct or shall assent to suspension of operations or of production of oil or gas under this lease, after a valuable deposit of oil or gas shall have been discovered within the lands leased, any payment of acreage rental prescribed herein likewise shall be suspended during such period of suspension of all operations and production; and this lease shall not be deemed to expire by reason of suspension of prospecting, drilling, or production, pursuant to any order or consent of the said Secretary.

(e) *Royalties.*—To pay the lessor royalties, as follows, on the amount or value of all production from the leased

lands (except that portion thereof used for production purposes on said lands or unavoidably lost):

(1) When the price of oil used in computing royalty value is $1 or more per barrel, the percentum of royalty shall be as follows:

When the average production for the calendar month in barrels per well per day is

not over				50,	the royalty shall be	12.5	percent;
over	50	but not over	60,	the royalty shall be	13	percent;
over	60	but not over	70,	the royalty shall be	14	percent;
over	70	but not over	80,	the royalty shall be	15	percent;
over	80	but not over	90,	the royalty shall be	16	percent;
over	90	but not over	110,	the royalty shall be	17	percent;
over	110	but not over	130,	the royalty shall be	18	percent;
over	130	but not over	150,	the royalty shall be	19	percent;
over	150	but not over	200,	the royalty shall be	20	percent;
over	200	but not over	250,	the royalty shall be	21	percent;
over	250	but not over	300,	the royalty shall be	22	percent;
over	300	but not over	350,	the royalty shall be	23	percent;
over	350	but not over	400,	the royalty shall be	24	percent;
over	400	but not over	450,	the royalty shall be	25	percent;
over	450	but not over	500,	the royalty shall be	26	percent;
over	500	but not over	750,	the royalty shall be	27	percent;
over	750	but not over	1000,	the royalty shall be	28	percent;
over	1000	but not over	1250,	the royalty shall be	29	percent;
over	1250	but not over	1500,	the royalty shall be	30	percent;
over	1500	but not over	2000,	the royalty shall be	31	percent;
over	2000			the royalty shall be	32	percent.

(2) When the price of oil used in computing royalty value is less than $1 per barrel, the per centum of royalty shall be the foregoing multiplied by the ratio of said price to a price of $1 per barrel: *Provided, however,* That the per centum of royalty shall never be less than 12.5.

(3) If the United States shall take its royalty in oil, the price received by the lessee, as well as that received by the lessor shall be considered in determining the price to govern the per centum of royalty, unless both prices are $1 or more per barrel.

(4) On gas, including inflammable gas, helium, carbon dioxide and all other natural gases and mixtures thereof, and on natural or casing-head gasoline and other liquid products obtained from gas:

When the average production of gas per well per day for the calendar month does not exceed 5,000,000 cubic

feet, 12½ percent; and when said production of gas exceeds 5,000,000 cubic feet, 16⅔ percent of the amount or value of the gas and liquid products produced, said amount or value of such liquid products to be net after an allowance for the cost of manufacture: *Provided,* That the allowance for cost of manufacture may exceed two-thirds of the amount or value of any product only on approval by the Secretary of the Interior, and that said value of gas and of liquid products shall be as determined by said Secretary.

The average production per well per day for oil and for gas shall be determined under rules and regulations approved by the Secretary of the Interior.

(5) It is expressly agreed that the Secretary of the Interior may establish reasonable minimum prices for purposes of computing royalty in value on any or all oil, gas, natural gasoline, and other liquid products obtained from gas; and that in no case shal- the price so established be less than the estimated reasonable value of the product, due consideration being given to the highest price paid for a part or for a majority of production of like quality in the same field, to the price received by the lessee, to posted prices and to other relevant matters.

[fol. 280] (6) When paid in value, such royalties on production shall be due and payable monthly on the last day of the calendar month next following the calendar month in which produced. When paid in amount of production, such royalty products shall be delivered in merchantable condition on the premises where produced without cost to lessor, unless otherwise agreed to by the parties hereto, at such times and in such tanks provided by the lessee as reasonably may be required by the lessor: *Provided,* That the lessee shall not be required to hold such royalty oil or other liquid products in storage beyond the last day of the calendar month next following the calendar month in which produced: *And provided further,* That the lessee shall be in no manner responsible or held liable for the loss or destruction of royalty oil or other liquid products in storage from causes over which the lessee has no control.

(7) Royalties, whether in amount or value of production, shall be subject to reduction whenever the average daily production of the oil wells on the entire leasehold or on any

tract or portion thereof segregated for royalty purposes shall not exceed ten (10) barrels per well per day, or where the cost of production of oil or gas is such as to render further production economically impracticable, if in the judgment of the Secretary of the Interior the wells cannot be successfully operated upon the royalties fixed herein.

(f) Contracts for disposal of products.—To file with the Federal oil and gas supervisor or such other officer as the Secretary of the Interior may designate, copies of all contracts immediately upon execution thereof, and full information as to all other arrangements for the disposal of oil, gas, natural gasoline, and other products produced hereunder (except products used for production purposes on the leased lands or unavoidably lost), and not to sell or otherwise dispose of the products of the land leased except in accordance with a contract or other arrangement first approved by said officer, such approval to be subject to review by the Secretary of the Interior but to be effective unless and until revoked by said Secretary or his said subordinate.

(g) Monthly statements.—To furnish monthly statements in detail at such time and in such form as may be prescribed by the lessor, showing the amount and quality of all oil, gas, natural gasoline, and other substances produced during the preceding calendar month and the amounts thereof used for production purposes on the leased lands or unavoidably lost, and to furnish current records and monthly statements of the amounts thereof sold or otherwise disposed of and the proceeds therefrom.

(h) Payments.—Unless otherwise directed by the Secretary of the Interior, to make rental, royalty, or other payments to the lessor, to the order of the Treasurer of the United States, such payments to be tendered to the Register of the district land office in which the lands are located or to the Commissioner of the General Land Office if there is no district land office in the State in which the lands are located.

(i) Inspection.—To keep open at all reasonable times for the inspection of any duly authorized officer of the Department, the leased premises and all wells, improvements, machinery, and fixtures thereon or connected therewith, and all books, accounts, maps, and records relative to opera-

tions and surveys or investigations on the leased lands or under the lease.

(j) Plats and reports.—To furnish at such times and in the manner and form prescribed by or on behalf of the lessor, a plat showing all development work and improvements on the leased lands, and other related information, with a report as to all buildings, structures, or other works placed in or upon said leased lands; and to report in detail when required as to the stockholders, investment, depreciation, and cost of operation, and the amount, nature, and quality of products sold, and the amount received therefor.

(k) Well records.—To keep a daily drilling record, a log, and complete information on all well surveys in form acceptable to or prescribed by or on behalf of the lessor of all the wells drilled on the leased lands, and an acceptable record of all subsurface investigations affecting said lands, which log, information, and records, or copies thereof, shall be furnished to the lessor as requested or required.

(l) Diligence—Prevention of waste—Health and safety of workmen.—To exercise reasonable diligence in drilling and producing the wells herein provided for unless consent to suspend operations temporarily is granted by the Secretary of the Interior; to carry on all operations hereunder in a good and workmanlike manner, in accordance with approved methods and practice as provided in the operating regulations, having due regard for the prevention of waste of oil or gas developed or damage to deposits or formations containing oil, gas, or water or to coal measures or other mineral deposits, for conservations of gas energy, for the preservation and conservation of the property for future productive operations, and for the health and safety of workmen and employees; to plug properly and effectively all wells before abandoning the same; not to drill any well within 200 feet of any of the outer boundaries of the lands covered hereby, unless the adjoining lands have been patented or the title thereto otherwise vested in private owners; to carry out at expense of the lessee all reasonable orders of the lessor relative to the matters in this paragraph, and that on failure of the lessee so to do the lessor shall have the right to enter on the property and to accomplish the purpose of such orders at the lessee's cost: *Provided*, That the lessee shall not be held responsible for

delays or casualties occasioned by causes beyond lessee's control.

(m) Regulations.—To abide by and conform to any and all reasonable regulations of the Secretary of the Interior now or hereafter in force, all of which regulations are made a part and condition of this lease: *Provided,* That such regulations are not inconsistent with any express and specific provisions hereof; and particularly that no regulations hereafter approved shall effect a change in the rate of royalty or annual rental herein specified without the written consent of the parties to this lease.

(n) Taxes and wages—Freedom of purchase.—To pay when due, all taxes lawfully assessed and levied under the laws of the State or the United States upon improvements, oil, and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; to accord all workmen and employees complete freedom of purchase, and to pay all wages due workmen and employees at least twice each month in the lawful money of the United States.

[fol. 281] *(o) Reserved deposits.*—To comply with all statutory requirements and regulations thereunder, if the lands embraced herein have been or shall hereafter be disposed of under the laws reserving to the United States the deposits of oil and gas therein, subject to such conditions as are or may hereafter be provided by the laws reserving such oil or gas.

(p) * *Assignment of lease.*—Not to assign this lease or any interest therein by an operating agreement or otherwise, nor to sublet any portion of the leased premises, except with the consent in writing of the Secretary of the Interior first had and obtained.

(q) Deliver premises in cases of forfeiture.—To deliver up the premises leased, with all permanent improvements thereon, in good order and condition in case of forfeiture of this lease; but this shall not be construed to prevent the removal, alteration, or renewal of equipment and improvements in the ordinary course of operations.

(r) Pipe lines to purchase or convey at reasonable rates and without discrimination—If owner, or operator, or owner

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* Cheyenne 065711.

or a controlling interest in any pipe line or of any company operating the same which may be operated accessible to the oil or gas derived from lands under this lease, to accept and convey and, if a purchaser of such products, to purchase at reasonable rates and without discrimination the oil or gas of the Government or of any citizen or company not the owner of any pipe line, operating a lease or purchasing or selling oil, gas, natural gasoline, or other products under the provisions of the Act.

(s) Reserved or segregated lands.—If any of the land included in this lease is embraced in a reservation or segregated for any particular purpose, the lessee shall conduct operations thereunder in conformity with such requirements as may be made by the Secretary of the Interior for the protection and use of the land for the purpose for which it was reserved or segregated, so far as may be consistent with the use of the land for the purposes of this lease, which latter shall be regarded as the dominant use unless otherwise provided herein or separately stipulated.

Sec. 3. The lessor expressly reserves:

(a) Rights reserved—Easements and rights-of-way.—The right to permit for joint or several use easements or rights-of-way, including easements in tunnels upon, through or in the lands leased, occupied, or used as may be necessary or appropriate to the working of the same or of other lands containing the deposits described in the Act, and the treatment and shipment of products thereof by or under authority of the Government, its lessees or permittees, and for other public purposes.

(b) Disposition of surface.—The right to lease, sell, or otherwise dispose of the surface of the lands embraced within this lease under existing law or laws hereafter enacted, insofar as said surface is not necessary for the use of the lessee in the extraction and removal of the oil and gas therein: *Provided*, That this reservation shall not apply to any lands herein described, title to which has passed from the United States.

(c) Monopoly and fair prices.—Full power and authority to promulgate and enforce all orders necessary to insure the sale of the production of the leased lands to the United States and to the public at reasonable prices, to protect the

interests of the United States, to prevent monopoly, and to safeguard the public welfare.

(d) Helium.—Pursuant to section 1 of the Act, and section 1 of the Act of Congress approved March 3, 1927 (44 Stat. 1387), as amended, the lessor reserves the ownership and the right to extract, under such rules and regulations as shall be prescribed by the Secretary of the Interior, helium from all gas produced under this lease, but the lessee shall not be required to extract and save the helium for the lessor; in case the lessor elects to take the helium the lessee shall deliver all gas containing same, or portion thereof desired, to the lessor at any point on the leased premises in the manner required by the lessor, for the extraction of the helium in such plant or reduction works for that purpose as the lessor may provide, whereupon the residue shall be returned to the lessee with no substantial delay in the delivery of gas produced from the well to the purchaser thereof: *Provided,* That the lessee shall not, as a result of the operation in this paragraph provided for, suffer a diminution of value of the gas from which the helium has been extracted, or loss otherwise, for which the lessee is not reasonably compensated, save for the value of the helium extracted; the lessor further reserves the right to erect, maintain, and operate any and all reduction works and other equipment necessary for the extraction of helium on the premises leased.

(e) Taking of royalties.—All rights pursuant to section 36 of the Act, to take royalties in amount or in value of production.

(f) Casing.—All rights pursuant to section 40 of the Act, to purchase casing and lease or operate valuable water wells.

Sec. 4. *Drilling and producing restrictions.*—It is covenanted and agreed that the rate of prospecting and developing and the quantity and rate of production from the lands covered by this lease shall be subject to control in the public interest by the Secretary of the Interior, and in the exercise of his judgment the Secretary may take into consideration, among other things, Federal laws, State laws, and regulations issued thereunder, or lawful agreements among operators regulating either drilling or production, or both.

Sec. 5. *Surrender and termination of lease.*—The lessee may, on consent of the Secretary of the Interior, first had and obtained in writing, surrender and terminate this lease upon payment of all rents, royalties, and other obligations due and payable to the lessor, and upon payment of all wages and moneys due and payable to the workmen employed by the lessee, and upon a satisfactory showing to the Secretary that the public interest will not be impaired; but in no case shall such termination be effective until the lessee shall have made full provision for conservation and protection of the property; upon like consent had and obtained the lessee may surrender any legal subdivisions of the area included herein.

[fol. 282] 2 (p).* *Assignment of oil and gas lease or interest therein.* Not to assign this lease, or any interest therein, whether by operating agreement, working or royalty interest, or otherwise, nor to sublet any portion of the leased premises, except with the consent in writing of the Secretary of the Interior. All assignments must be submitted in triplicate within 30 days from the date of execution and must contain all of the terms and conditions agreed upon by the parties thereto. If the consideration expressed in the agreement fails to describe the true consideration, an accompanying affidavit must be submitted stating the consideration in full. The affidavit will be treated as confidential and not for public inspection. No assignment of any kind will be recognized as valid which, exclusive of the royalty payable to the United States, shall create overriding royalty interests in the lease aggregating in excess of five per cent. Furthermore, no assignments providing for other payments out of production which constitute a burden upon lease operations prejudicial to the interests of the United States will be approved.

——— ———.

[fol. 283] Sec. 6. *Purchase of materials, etc., on termination of lease.*—Upon the expiration of this lease, or the earlier termination thereof pursuant to the last preceding section, the lessor or another lessee may, if the lessor shall so elect within 3 months from the termination of the lease, purchase all materials, tools, machinery, appliances, struc-

* Cheyenne 065711.

tures, and equipment placed in or upon the land by the lessee, and in use thereon as a necessary or useful part of an operating or producing plant, on the payment to the lessee of such sum as may be fixed as a reasonable price therefor by a board of three appraisers, one of whom shall be chosen by the lessor, one by the lessee, and the other by the two so chosen; pending such election all equipment shall remain in normal position. If the lessor, or another lessee, shall not within 3 months elect to purchase all or any part of such materials, tools, machinery, appliances, structures, and equipment, the lessee shall have the right at any time, within a period of 90 days, to remove from the premises all the materials, tools, machinery, appliances, structures, and equipment which the lessor shall not have elected to purchase, save and except casing in wells and other equipment or apparatus necessary for the preservation of the well or wells. Any materials, tools, machinery, appliances, structures, and equipment, including casing in or out of wells on the leased lands, shall become the property of the lessor on expiration of the period of 90 days above referred to or such extension thereof as may be granted on account of adverse climatic conditions throughout said period.

Sec. 7. *Proceedings in case of default.*—If the lessee shall fail to comply with the provisions of the Act, or make default in the performance or observance of any of the terms, covenants, and stipulations hereof and such default shall continue for a period of 30 days after service of written notice thereof by the lessor, the lease may be canceled by the Secretary of the Interior in accordance with section 17 of the Act, as amended, and all materials, tools, machinery, appliances, structures, equipment, and wells shall thereupon become the property of the lessor, except that if said lease was earned as a preference right pursuant to section 14 of the Act or covers lands known to contain valuable deposits of oil or gas, the lease may be canceled only by judicial proceedings in the manner provided in section 31 of the Act; but this provision shall not be construed to prevent the exercise by the lessor of any legal or equitable remedy which the lessor might otherwise have. A waiver of any particular cause of forfeiture shall not prevent the cancelation and forfeiture of this lease for any other cause of forfeiture, or for the same cause occurring at any other time.

Sec. 8. *Heirs and successors in interest.*—It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

Sec. 9. *Unlawful interest.*—It is also further agreed that no Member of, or Delegate to, Congress, or Resident Commissioner, after his election or appointment, or either before or after he has qualified, and during his continuance in office, and that no officer, agent, or employee of the Department of the Interior, shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom; and the provisions of section 3741 of the Revised Statutes of the United States, and sections 114, 115, and 116 of the Codification of the Penal Laws of the United States approved March 4, 1909 (35 Stat. 1109), relating to contracts, enter into and form a part of this lease so far as the same may be applicable.

In Witness Whereof:

The United States of America, by Oscar L. Chapman, Assistant Secretary of the Interior. F. G. Nason.

Witnesses to signature of—F. G. Nason: —— ——, Tony Price.

(Here follows 1 photolithograph, side folio 284)

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[fols. 285-286] PLAINTIFF'S EXHIBIT 7-B

W. A. Richards, Surveyor General

Frank Bond, Chief Clerk

Department of the Interior,

General Land Office,

Office of U. S. Surveyor General,

District of Wyoming,

Cheyenne, April 11, 1892.

The Commissioner of the General Land Office, Washington, D. C.

SIR:

I inclose herewith for your approval contract and bond No. 247, dated March 8, 1892, with Augustus L. Coleman, U. S. Deputy Surveyor, liability $3700.00, payable from the annual appropriation for the fiscal year ending June 30, 1892. I inclose letter from the State Board of Control asking for the survey of the townships embraced in this contract on the ground that the State desires to make selections of land within said tract.

Also find inclosed for approval copy of special instructions pertaining to the survey embraced in said contract.

As the deputy is anxious to begin preparations for this survey I respectfully request that you notify me of your action upon this contract as soon as possible.

Very respectfully, Wm. A. Richards, U. S. Surveyor General.

[fol. 287] [Endorsed:] Office of U. S. Surveyor General, April 11, 1892. Transmitting for Approval Con't & Bond No. 247, Liability $3700.00. A. L. Coleman, D. S. Wm. A. Richards, U. S. Surveyor General. Sec. to S. G. Wyo., April 26, 1892; also April 28, 1892. f.

[fols. 288-289] PLAINTIFF'S EXHIBIT 7-A

Elwood Mead, Engineer

State of Wyoming,
Engineer's Office

Cheyenne, March 7, 1892.

Wm. A. Richards, U. S. Surveyor General, Cheyenne Wyoming.

DEAR SIR:

The State Board of Control is charged with the duty of selecting the lands donated by the United States Government to the State of Wyoming, at the time of its admission. In order that these selections may be made without delay the Board requests that you cause to be surveyed and subdivided as speedily as possible, the following named townships, to wit:

Tps. 33 to 40 N., inclusive, Rgs. 89 to 94 W. inclusive.
Tps. 41 and 42 N., Rgs. 93 and 94 W.
Tps. 55 and 56 N., inclusive, Rgs. 89 to 92 W., inclusive.
Tps. *57 and 58 N.*, Rgs. *89 to 109 W.* inclusive.
Tps. 53 to 56 N., inclusive, Rgs. 104 to 109 W. inclusive.
Tps. 47 to 52 N., inclusive, Rgs. 105 W.
Tps. 31 and 32 N., Rgs. 103, 104 and 105 W.
Tps. 33 N., Rgs. 102 to 106 W., inclusive.
Tps. 37, 38 and 39 N., Rgs. 105 W.
Tps. 34 to 40 N., inclusive, Rgs. 106, 107 and 108 W.
Tps. 37 to 46 N., inclusive, Rgs. 117 and 118 W.
Tps. 37 to 40 N., inclusive, Rg. 119 W. Also
Tps. 12 to 17 N., inclusive, Rg. 80 W.
Tps. 13, 16 and 17 N., Rg. 81 W.
Tp. 17 N., Rg. 82 W.
Tps. 12 and 13 N., Rgs. 83, 84 and 85 W., and
Tp. 14 N., Rg. 85 W. of the 6th P. M., Wyoming.
Tp. 34 N., Rgs. 95, 96, 97 and 98 W.

Respectfully, Ellwood Mead, Prest. Board of Control.

(Here follow 4 Photolithographs, side folios 290-293)

Duplicate
Rec'd with Surveyor General's
letter of April 11, 1892

CONTRACT AND BOND

No. 247

Surveyor General's Office,

Cheyenne, Wyoming
March 8th, 1892

Wm. H. Richards
U. S. Surveyor General.

Augustus L. Coleman
U. S. Deputy Surveyor.

$3700.00

Payable from Annual Appropriations for the fiscal year ending June 30th 1892

Approved April 28th, 1892

Thos. H. Carter
Commissioner of the Gen'l Land Office.

Recorded in Contract Book No. 9, page 268

(2624—4,000.)

This 1882,

between the SURVE in behalf of the UNITED

STATES, of the ot

*WITNE*ideration of the conditions,

terms, provisions, a nt and agree with the said

Surveyor General, ... own proper person ,

with the assistance rs of the United States, the

printed Manual of ffice, and with such special

instructions as he n deemed a part of this con-

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and subd, 101 and 102
west and and 102 west

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of [illegible]

of [illegible]

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[illegible], 1892

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COUNTY OF .....

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12. The dup Commissioner will forward the *triplicate* to the

[fol. 294] PLAINTIFF'S EXHIBIT 8-C

U. S. Surveyor General's Office,

Cheyenne, Wyoming, March 11, 1892.

Augustus L. Coleman, U. S. Deputy Surveyor, Red Bank, Wyoming.

SIR:

The following special instructions are supplemental to the Manual dated January 1, 1891, and with the Manual form a part of your contract No. 247, dated March 8, 1892, and are issued for your governance in matters pertaining to the surveys embraced in said contract, and which are not provided for in the printed manual.

For the survey of the 12th. Guide Meridian and the 12th. Auxiliary Meridian West you will begin at the proper standand township corners on the 14th. Standard Parallel North and thence, after proper observation for the true meridian, run due north to the north boundary of Wyoming., and at the points of intersection with the said boundary you will establish proper closing corners to townships 58 N., Rgs., 96 and 97 west and Rgs. 100 and 101 west, respectively, and connect the said closing corners with the nearest boundary monuments. In the survey of these meridian lines you will employ two sets of chairmen and otherwise establish said lines in the manner strictly conformable to the requirements of the manual.

For the survey of the exterior township lines embraced in your contract you will begin at the standard corner to townships 57 N., Rgs. 97 and 98 west and thence, after proper observation for the true meridian, run due north six miles and survey and establish the west boundary of township 57 N., Rg. 97 west; thence east on a random line to the 12th. Guide Meridian west and return on a true line for the north boundary of the township. Thence north on a true line to the north boundary of Wyoming. You will set a proper closing corner on the said boundary line and connect the same with the nearest boundary monument. [fol. 295] In like manner survey and establish the north and west boundaries of Tps. 57 N., Rgs. 98, 99, 101 and 102 west, and the west boundaries of fractional townships 58 N., Rgs. 98, 99, 101, and 102 west. You will survey and establish the north boundary of township 57 N., Rg. 100 west by

running west on a random line from the corner to townships 57 and 58 N., Rgs. 99 and 100 west to the 12th. Auxiliary Meridian West, setting temporary corners at each 40 and 80 chains, and return thence on a true line permanently establishing the temporary corners in their proper places.

The survey of the lands embraced in your contract has been requested by the State Board of Control, a Board authorized by the Legislature to select the lands donated to the State by the General Government, and in view of the fact that it will be impossible, in advance of the surveys, to designate the lands which the Board of Control wil- select for State purposes, you are instructed to subdivide in full every township containing lands valuable for any purpose and upon which you enter for subdivisional work. Utter impracticability on account of rugged character of the land, or exhaustion of the appropriation, will be the only valid excuse for leaving unsurveyed section lines in any township upon which you have entered for subdivisional work.

The method of subdividing townships by running random east and west section lines parallel to the south boundary of the section instead of the south boundary of the township, is now in force and will be required of you in your work under contract No. 247.

You will make note of all permanent settlements, and the names of the settlers so far as they are obtainable, if any are found within the lines of your survey, and in such manner as will allow of their improvements being accurately located upon the township diagrams.

You will keep a careful account of the number of miles you have surveyed and stop work when the limit of your contract is reached.

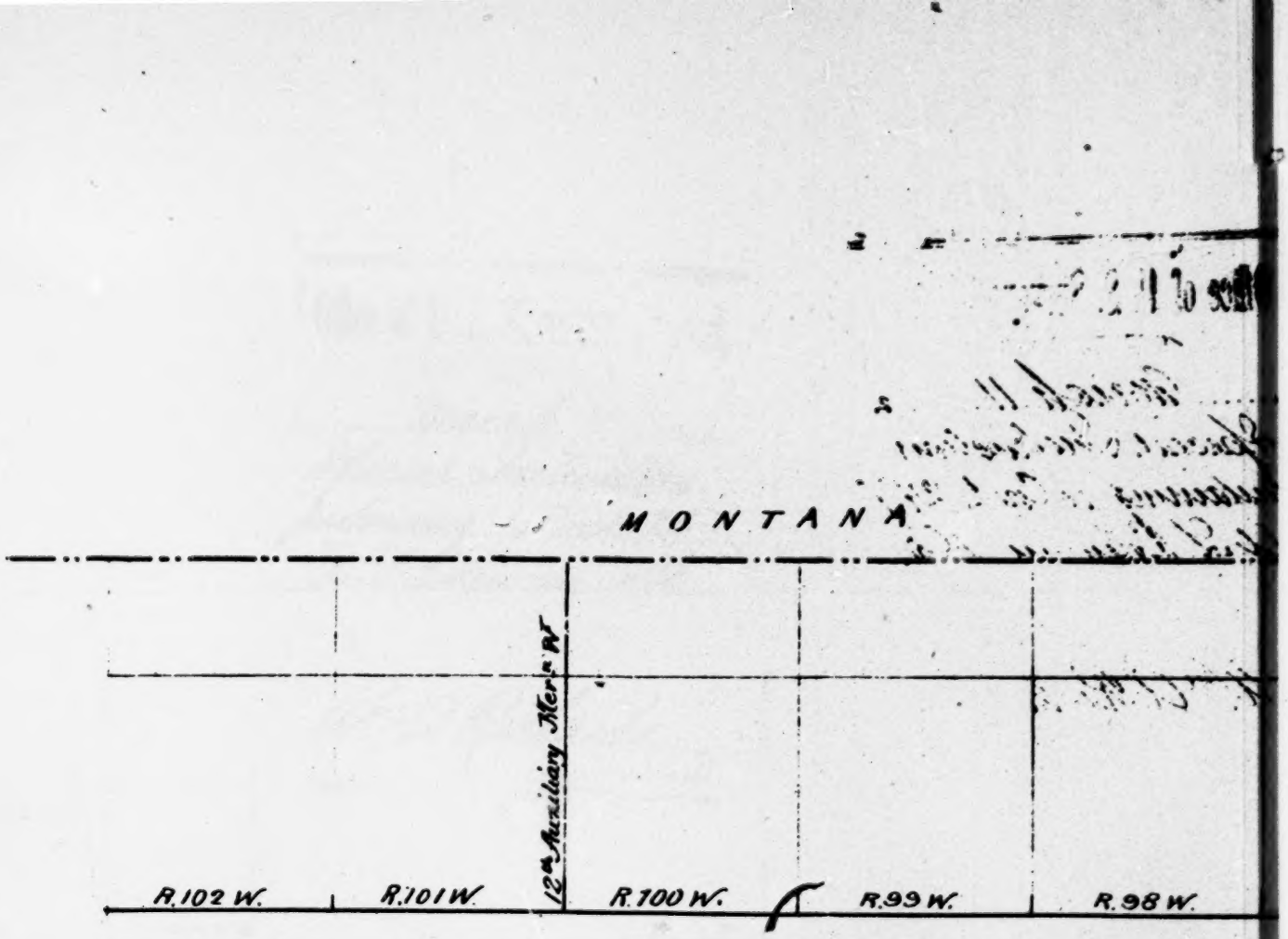
[fol. 296] Should it be necessary to do retracing of prior surveys in connection with your work the same must be done at your own expense, as a legitimate contingent in the execution of your contract. It is not contemplated by these instructions that the term "retracement" shall embrace the establishment of a line, where the same shall have become obliterated, by remeasuring all distances and re-setting all corners. The survey of the 14th. Standard Parallel North was made nine years ago and in view of the fact that this standard is a base line from which all the lines embraced in your contract are projected northward, you are instructed, that wherever said parallel shall have become obliterated to such a degree as to require re-measurement

and re-establishment of the corners thereon, to re-establish same in the manner required by the Manual for the survey of standard lines. For such necessary re-survey and re-establishment of the 14th. Standard Parallel North, you will be compensated at the intermediate and minimum rates per mile provided by the appropriation act of the present fiscal year provided, however, that in the field notes of your survey you incorporate an accurate and careful statement showing the necessity for such re-survey.

Your attention is called to the practice now prevailing, of having all surveys examined in the field by a competent surveyor, before their approval by the Commissioner.

Attached hereto is a diagram embracing the standard and township lines embraced in your contract, and the same is only intended as a guide, assisting you to a proper understanding of these instructions.

Very respectfully, Wm. A. Richards, U. S. Surveyor General.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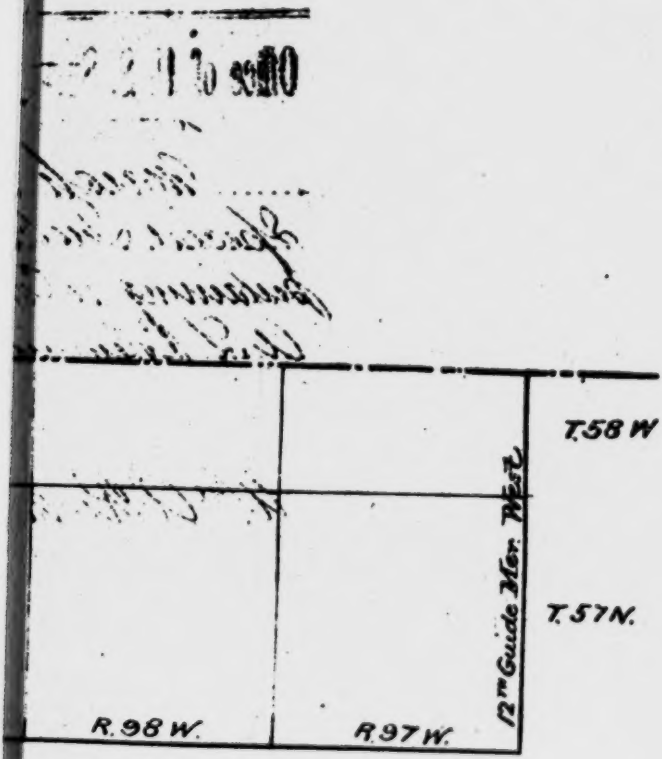

T.58 W
12th Guide Mer. West
T.57N.
R.98 W.
R.97 W.

Office of U. S. Surveyor General,

[illegible]

March 11 1892

Special Instructions

Relaining to Cont. 247

A. L. Coleman 108

Wm A. Richards

[illegible]

[fols. 299-300] PLAINTIFF'S EXHIBIT 9

Department of the Interior,
General Land Office,
Office of U. S. Surveyor General,
District of Wyoming

W. A. Richards, Surveyor General, Frank Bond, Chief Clerk.

Cheyenne, August 5, 1892.

The Commissioner of the General Land Office, Washington, D. C.

SIR:

The surveys made by Deputy Surveyor A. L. Coleman, under his contract No. 247, $3700, dated March 8, 1892, have been completed and are ready for examination in the field. The same is true of the surveys made by Deputy Surveyor J. E. Shannon, under his contract No. 246, $5000, dated February 19, 1892. The surveys being made by Deputies Carpenter and Warner under their joint contract No. 245, $15000, dated January 23, 1892, are progressing rapidly toward completion. All of these surveys should be examined before November 1, and the two first named as soon as it is possible to do so. Portions of the land surveyed under each contract lie so high in the mountains that unless examined during this season, they cannot be reached before June of next year. In order to make the examinations most expeditiously and with the least expense they should be made by the same party in consecutive order without coming in from the field.

Contract No. 247 should be examined first, contract No. 246 next, and contract No. 245 last. Work under the two [fol. 301] first named is now completed in the field and work under No. 245 will be completed by the time the examination of the others is finished.

If you desire it, I am willing to make these examinations in person. I would like to do it because having passed more than twenty years of my life in surveying in the field I take a great interest in it, and much prefer it to office work. I also desire to have personal knowledge of the character of the work done by my deputies. In making

these examinations, I also gain much valuable information respecting the localities in which surveys are needed. A saving of five dollars per day is made by my doing the work instead of sending a special examiner, which will amount to quite a large sum in the amount of work to be examined in this District this season.

I estimate the expense of these examinations as follows:

Contract No. 247, liability	$3700	$600.00
Contract No. 246, liability	$5000	$600.00
Contract No. 245, liability	$15000	$600.00
Total amount of surveys to be examined	$23700	
Total cost of examination,		$1800.00

I estimate that 30 days will be required upon the examination of each survey although No. 247 is only one-fourth as large in amount as No. 245. The former however, and also No. 246 are at the minimum and intermediate rates while No. 245 is at maximum rates of $12, $15, and $18 per mile, consequently will embrace a smaller area in proportion to the amount of liability. More time will be required to reach No. 247 than will be required in going from that [fol. 302] survey to No. 246, while the distance from the latter to No. 245 will be so short that nearly the entire thirty days allowed by law for examination can be devoted to retracing lines. The amounts estimated as necessary for these examinations are sufficient to provide for a tolerably thorough examination, but if you do not deem it advisable to expend so large a sum for that purpose, I can make a more hasty examination for a less sum.

If I am to make these examinations, I would like to be authorized to do so as soon as possible as my experience last year when I was out in the mountains during the entire month of November when the weather was severely cold, makes me anxious to conclude the work earlier this year. I would not wait for the receipt of the amount allowed which could follow later on. If you prefer to send a special examiner from your office to make these examinations, it will be entirely satisfactory to me, but I would like to have the examination begun at once to insure its completion before winter. My office force is so organized that I can do this work without detriment to the business of the office,

and for the reasons stated, I am willing to make the examination in person.

Very respectfully, Wm. A. Richards, U. S. Surveyor General.

[fols. 303-304] [Endorsed:] Office of U. S. Surveyor General, Cheyenne, Wyo. Aug. 5, 1892. Asks authority to *to* examine surveys and submits estimates. Wm. A. Richards, U. S. Surveyor General. Noted in Exam. Book No. 2, pages 171-172. J. E. Ansd. Aug. 11, 1892.

[fol. 305] PLAINTIFF'S EXHIBIT 10

Department of the Interior, General Land Office,

Washington, D. C.

August 11, 1892.

The U. S. Surveyor General, Cheyenne, Wyoming.

SIR:

I am in receipt of your letter dated August 5, 1892, stating that the surveys executed by A. L. Coleman, D. S., under contract No. 247, dated March 8, 1892, and by J. E. Shannon, D. S., under contract No. 246, dated February 19, 1892, have been completed and are ready for examination in the field; also that the surveys of Messrs. Carpenter and Warner, under contract No. 245, dated January 23, 1892, are progressing rapidly toward completion. You state further that portions of the lands surveyed under each contract lie so high in the mountains that unless examined during this season they cannot be reached before June of next year; that to make the examinations most expeditiously and with the least expense, they should be made by the same party, and in consecutive order without coming in from the field, and you express your willingness, if so desired, to make the examinations in person.

Your estimate of the cost of examining said surveys is as follows:

[fols. 306-307] Contract No. 245, liability $3,700	$600
Contract No. 246, liability 5,000	600
Contract No. 247, liability 15,000	600
Total cost of examinations	$1,800

All of the special agents for the examination of surveys are now on duty in other districts, and as it may not be practicable to send one of them to Wyoming for sometime to come, you are hereby authorized to make a personal inspection of the surveys executed under the contracts above referred to, at a cost not exceeding your estimate.

The sum of $1,800 will be advanced to you from the fund applicable to field examinations for the current fiscal year.

Very respectfully, I. R. Conwell, Acting Commissioner.

[fol. 308] PLAINTIFF'S EXHIBIT 11

Department of the Interior, General Land Office,

Office of U. S. Surveyor General,

District of Wyoming

Cheyenne, Nov. 26, 1892.

The Commissioner of the General Land Office, Washington, D. C.

SIR:

I forward herewith, in separate packages, for your approval, the plats and transcripts of field notes of surveys executed by Augustus L. Coleman, U. S. Deputy Surveyor, under his contract No. 247, dated, March 8, 1892. The returns of this survey embrace the following plats and transcripts, viz:

1 plat of exterior lines and eleven plats of subdivisional lines, in all 12 plats.
1 transcript of the 14th. Standard Parallel.
1 transcript of the 12th. Guide and 12th. Auxiliary Meridians.
2 transcripts of the exterior lines.
11 transcripts of the *of* subdivisional lines.

---

15 transcripts in all.

This contract and the special instructions thereunder were approved by you in your letter "E", dated April 28, 1892.

I also inclose the transcript of field notes of examination of the above surveys made by myself under authority contained in your letter "E" dated Aug. 11, 1892.

Very Respectfully, Wm. A. Richards, U. S. Surveyor General.

[fols. 309-310] [Endorsed:] Office of U. S. Surveyor General, Cheyenne, Wyo. Nov. 30, 1892. No. 49. 135396. Nov. 26, 1892. Transmitting Plats & field notes of returns under Cont. 247, dated March 8, 1892. A. L. Coleman, U. S. Deputy Surveyor. Wm. A. Richards, U. S. Surveyor General. Noted in Exam. Book No. 2, page 172.

PLAINTIFF'S EXHIBIT 12

595-

#56624

(4—670.)

RECEIVED WITH
SUR. GEN'L'S. LETTER.
NOV 26 1892

FIELD NOTES

OF THE SURVEY OF

The Exterior Lines

of

Township 59 N. Ra 100 W. and 102 West

Township 58 N. Ra 101 and 101 West

Of the 6th Principal Meridian,

In the State of Wyoming.

AS SURVEYED BY

A L Coleman, U. S. Deputy Surveyor,

Under his Contract No. 247, dated March 1, 18[illegible].

Survey commenced May 29, 18[illegible].

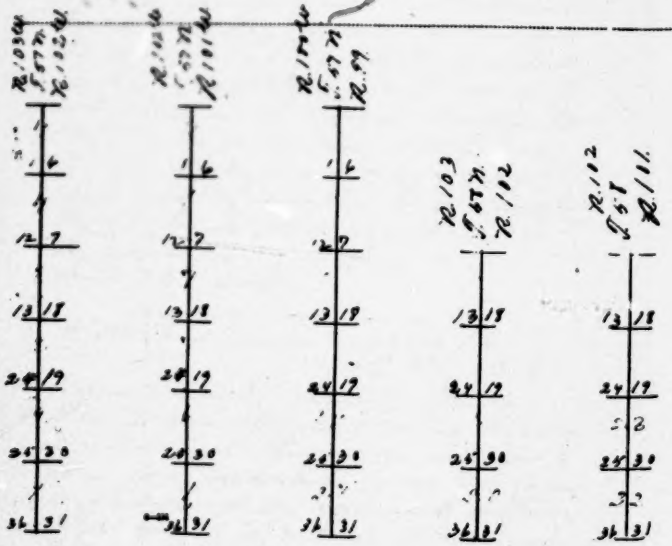
Survey completed June 9, 18[illegible].

311

199

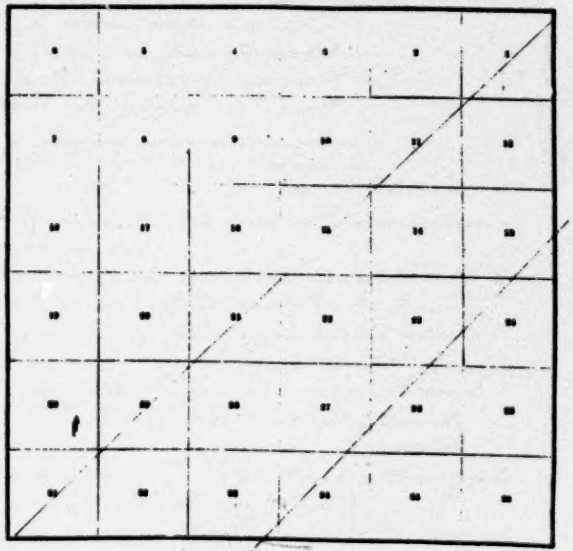
Names and Duties of Assistants.

Norman Henderson, chainman
William J. Kellogg, chainman
Arthur Mullen, flagman
Henry Millard, axeman

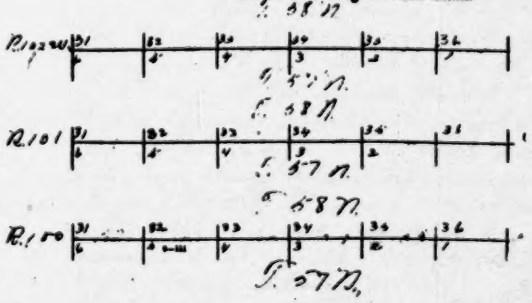


INDEX DIAGRAM.

Township ..... , Range .....



Meanders Page .....



Exterior Boundaries T. 57 N., R. 100 W.

Chains. 18 ins. in the ground for cor. to secs. 13, 18, 19 and 24, marked with 3 notches on N. and E. edges; dug pits 18×18×12 ins. in each sec., 5½ ft. dist., and raised a mound of earth, 2 ft. high, 4½ ft. base, alongside.
Land, gently rolling.
Soil, 2d rate.

North bet. secs. 13 and 18.
Va. 18° 30' E.

Over gently rolling land.
40.00 Set a sandstone 14×13×6 ins.; 9 ins. in the ground and ¼ sec. cor., marked ¼ on W. face; dug pits 18×18×12 ins. N. and S. of stone, 5½ ft. dist., and raised a mound of earth, 1½ ft. high, 3½ ft. base, alongside.
80.00 Set a sandstone 15×14×3 ins., 11 ins. in the ground for cor. to secs. 7, 12, 13 and 18, marked with 2 notches on N. and 3 notches on E. edges; dug pits 18×18×12 ins., in each sec., 5½ ft. dist., and raised a mound of earth, 2 ft. high, 4½ ft. base, alongside.
Land, nearly level.
Soil, 2d rate.

North bet. secs. 7 and 12.
Va. 18° 30' E.

Over nearly level land.
40.00 Set a sandstone 18×12×3 ins., 13 ins. in the ground for ¼ sec. cor., marked ¼ on W. face and raised a mound of stone, 1 ft. high, 2 ft. base, alongside.
Pits impracticable.
[redacted]

Exterior Boundaries T. 57 N., R. 100 W.

Chains. land.
54.00 Ascend.
72.00 Top of ridge. Bears N. W. and S. E.
Descend.
80.00 Set a sandstone 24×16×8 ins., 16 ins. in the ground for cor. to secs. 1, 6, 7 and 12, marked with 1 notch on N. and 6 notches on E. edges and raised a mound of stone, 1½ ft. high, 2 ft. base, alongside.
Pits impracticable.
Land, mountainous.
Soil, 2d and 4th rate.

North bet. secs. 1 and 6.
Va. 18° 30' E.

Descend over rough, mountainous land.
24.00 Silver Tip gulch, course N. 10° E.
40.00 Set a sandstone 24×14×3 ins., 18 ins. in the ground for ¼ sec. cor., marked ¼ on W. face; dug pits 18×18×12 ins. N. and S. of stone, 5½ ft. dist., and raised a mound of earth, 1½ ft. high, 3½ ft. base, alongside.
70.00 Enter rolling land.
80.00 Set a sandstone 18×14×3 ins., 12 ins. in the ground for cor. to Ftps. 57 and 58 N., Rs. 99 and 100 W., marked T. 58 on N. E., R. 99 on S. E., T. 57 on S. W. and R. 100 on N. W. faces with 6 notches on each edge; dug pits 24×18×12 ins., leaving thumbs on each line, N., S., E. and W. of stone, 6 ft. dist. and raised a mound of earth, 2½ ft. high, 5 ft. base alongside.
[redacted]

Exterior Boundaries T. 58 N. R. 100 W.

Chains [illegible] 1" = 1 mile.

Fractional Township.

From the Tp. cor. to Tps. 57 and 58 N. Rs. 99 and 100 W., established by me, I run west on a standard line bet. said Tps., the variation of my compass being 18° 30' E. I set temporary half mile and mile cor. bet. secs. 40 and 80 chs. and find the township line to be 6 miles and 2 chs. long and the falling to be 53 lks. N. of cor. to Tps. 57 and 58 N. Rs. 99 and 100 W., on the 6th Auxiliary Meridian W.

The corrected long. for the true line will therefore be S. 8 lks. W. per mile and the course will be N. 89° 56' E.

From the Tp. cor. to Tps. 57 and 58 N. Rs. 100 and 101 W. I run N. 89° 56' E. on a true line bet. secs. 6 and 31. Va. 18° 30' E.

Second cor. mountainous land, sloping W.

42.00 Set a sandstone 14 x 6 x 6 ins., 9 ins. in the ground for 1/4 sec. cor., marked 1/4 on N. face; dug pits 18 x 18 x 12 ins., E. and W. of stone, 5 lks. dist., and raised a mound of earth, 1½ ft. high, 3½ ft. base, alongside.

82.00 Set a sandstone 14 x 11 x 4 ins., 9 ins. in the ground for cor. to secs. 5, 6, 31 and 32, marked

631 32

Exterior Boundaries of T. 58 N., R. 10 W.

Line with 4 notches on E. and 1 notch on W. edges; stone pile 18 x 18 x 12 ins., in each side, 5½ ft. dist., and raised a mound of earth, 2 ft. high, 4½ ft. base, along said line.
Land, mountainous 12 chs.
Soil, 3d rate.

N. 87° 56' E., on a true line bet. secs. 5 and 32.
Va. 18° 30' E.
Ascending over mountainous land, stopping W.
40.00 Set a sandstone 22 x 10 x 3 ins., 16 ins. in the ground for ¼ sec. cor., marked ¼ on N. face; stone pile 18 x 18 x 12 ins., E. and W. of stone, 5½ ft. dist., and raised a mound of earth, 1½ ft. high, 3½ ft. base, alongside
80.00 Set a sandstone 20 x 12 x 2 ins., 15 ins. in the ground for cor. to secs. 4, 5, 32 and 33, marked with 4 notches on E. and 2 notches on W. edges; stone pile 18 x 18 x 12 ins., in each sec., 5½ ft. dist., and raised a mound of earth, 2 ft. high, 4½ ft. base, alongside
Land, mountainous 80 chs.
Soil, 3d rate.

N. 87° 54' E., on a true line bet. secs. 4 and 33.
Va. 18° 30' E.
Over mountainous land, descending.
23.00 Descend.
40.00 Set a sandstone 14 x 12 x 4 ins., 9 ins. in the ground for ¼ sec. cor., marked ¼ on N. face;

thence due 18.11.12 mis. E. and W of bottom 5½ Ft. dist. and raised a mound of earth, 1½ Ft. high, 3½ Ft. base, alongside

66.47 Upset, 19 chs. wide, course N 10° W

80.00 Set a sandstone 20.12.2 mis. 1½ mis. in the ground for cor. to secs. 3, 4, 33 and 34, marked with 3 notches on E. and W. edges; due pits 18.11.12 mis. in each base, 5½ Ft. dist., and raised a mound of earth, 2 Ft. high, 4½ Ft. base alongside

Land, mountainous 80 chs

Soil, 3rd rate.

N. 77° 56' E., on a true line bet. secs. 3 and 34.

Va. 18° 30' E.

Land, mountainous rough

80.00 Set a sandstone 16.10.4 mis, 11 mis. in the ground for cor to secs. 3 and 34, N. & Secs; due pits 18.11.12 mis. E. and W. of stone 5½ Ft. dist. and raised a mound of earth, 1½ Ft. high, 3½ Ft base alongside

80.00 Set a sandstone 16.13.4 mis, 11 mis in the ground for cor to secs. 2, 3, 34 and 35, marked with 3 notches on E. and 4 notches on W edges; due pits 18.11.12 mis. in each base, 5½ Ft. dist. and raised a mound of earth, 2 Ft high, 4½ Ft. base, alongside

Land, mountainous 80 chs

Soil, 3rd rate.

633

Exterior Boundaries T 58 N., R. 10 W.

chains	N. 79° 56' E., on a true line bet. secs. 2 and 35. Va. 19° 30' E.
	Ascend over rough, mountainous land.
40.00	Set a sandstone 20 × 12 × 6 ins. 15 ins. in the ground for cor. to secs. 2, 3, 34 and 35, marked with 4 notches on E. edge and raised a mound of stone, 1½ ft. high, 2 ft. base, alongside. Pits impracticable. Land, mountainous. 80 chs. Soil, 4th rate.
	N. 79° 56' E., on a true line bet. secs. 1 and 36. Va. 19° 30' E.
	Over rough, mountainous land. Ascending.
21.00	Enter scattering yellow pine and cedar timber and descend.
32.00	Small stream, 4 lks. wide, course N. 60° E. Ascend.
40.00	Set a sandstone 14 × 10 × 5 ins., 7 ins. in the ground for cor. to secs. 1, 2, 35 and 36, marked 4 on N. face; pits 18 × 18 × 12 ins., E. and W. of stone, 5½ ft. dist., and raised a mound of earth, 1½ ft. high, 3½ ft. base, alongside. The line to the 57 and 58 M. Ps. 99 and 100 Ills.
80.00	Land, mountainous. Soil, 4th rate.

315

Exterior Boundaries T. 58 N., R. 10 W

Soil. 4th rate
Timber, scrub pine and cedar
June 7, 1892

Latitudes, departures and closing errors.

Lines designated as	True bearing	Dist.	Latitudes N.	Latitudes S.	Departures E.	Departures W.
W boundary	North	480.	480.			
N boundary	N. 89° 56' E.	482.	.56		482	
E boundary	South	480.		480.		
S boundary	West	480.				480.
Convergency					.73	
	Totals		480.56	480.	482.73	480. 00
			480.		481.	
	Error in Lat. .56				2.73 Error in Dep.	

General Description.

Tp. mostly mountainous, some rolling land in S. W. portion. Soil, rocky, unfit for agriculture but produces a good growth of grass making the Tp. valuable for grazing.

A. L. Coleman,
U. S. Deputy Surveyor.

516

Approval.

Office of the U. S. Surveyor General,

Cheyenne, Wyoming, November 24, 1892.

The foregoing field notes of the survey of the exterior lines of T. 57 N., Rs. 100, 101 and 102 W., and of T. 58 N., Rs. 101 and 102 W., of the 6th Principal Meridian, are Wyoming

executed by

T. L. Coleman, U. S. Deputy Surveyor,

on his Contract No. 247, dated March 8, 1892, having been critically examined, the necessary corrections and explanations made, the said field notes, and the surveys they describe, are hereby approved.

Wm A. Richards

U. S. Surveyor General.

I certify that the foregoing transcript of the field notes of the above-described surveys in the district of Wyoming, has been correctly copied from the original notes on file in this office.

Wm A. Richards

U. S. Surveyor General.

639

PS6624

(4—679.)

NOV 26 1892

FIELD NOTES

OF THE SURVEY OF

The Exterior Lines

of

Township 57 North

Ranges 97, 98 and 99 West

Township 58 North

Ranges 97, 98, 99, and 100 West

Of the 6th Principal Meridian,

in the state of Wyoming

AS SURVEYED BY

A. L. Bowman, U. S. Deputy Surveyor,

Under his Contract No. 247, dated March 8, 1892.

Survey commenced June 1, 1892.

Survey completed June 16, 1892.

(100-6/93) 6-93

SIS

206

040

641

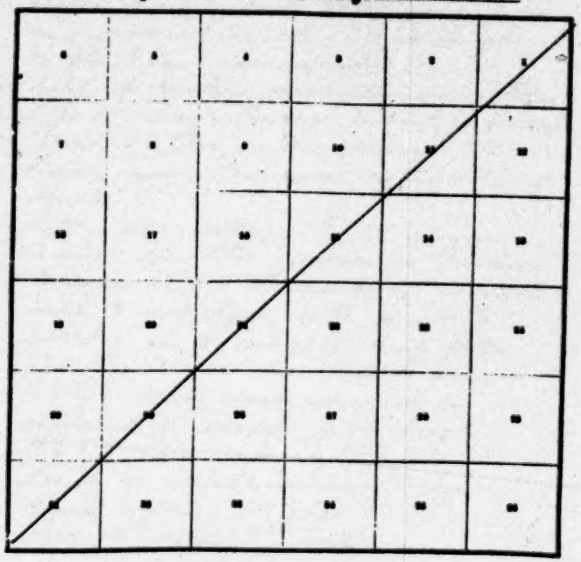
Names and Duties of Assistants.

Norman Henderson, chainman.
Wm H. Kellogg. chainman.
Ad. Mullins, flagman.
Henry Miller, axeman.

Index Diagram.

INDEX DIAGRAM.

Township . . . . . , Range . . . . . .



Meanders Page . . . . . .

319

10

Exterior Boundaries T. 58 N. R. 100 W.

Claim Survey commenced June 10, 1892.
Y. on an observation on Polaris at eastern elongation at the cor. to Tps. 57 and 58 N. Ra. 99 and 100 W. and find the true meridian so determined has at 5 P.M. June 10 a magnetic bearing of (8° 35' W which corrected by table, page 55 manual gives mean declination of N. 18° 30' E.

From the Tp. cor. to Tps. 57 and 58 N. Ra. 99 and 100 W. recently established by me
J Linn
North bet. secs. 31 and 36.
Va. 18° 30' E.
Over rolling land.
21.00 Silver Tip Gulch, course N. W. Ascend over rough mountainous land.
32.35 Perpendicular cliff 30 ft. high.
40.00 Set a sandstone 24 x 14 x 2 ins., 18 ins. in the ground for ¼ sec. cor. marked ¼ on W. face and raised a mound of stone 1½ ft. high, 2 ft. base, alongside. Pits, impracticable.
66.00 Top of spur, bears E. and W. Descend.
80.00 Set a sandstone 14 x 8 x 6 ins., 8 ins. in the ground for cor. to secs. 25, 30, 31 and 36, marked with 5 notches on N. and 1 notch on E. edge; dug pits 18 x 18 x 12 ins. in each sec. 5½ ft. dist. and raised a mound of earth 2 ft. high, 4½ ft. base, alongside.
Land, mountainous 59 chs.
rolling 21 chs.
Soil, rocky, 4th rate.
Timber, dwarf pine.

11

6-53

Exterior Boundaries T 58 N. R. 100 W.

Claim North bet. secs. 25 and 30.
Va. 18° 30' E.
Ascend very steep rocky slope.
20.00 Top of spur, bears N. W.
Descend steep slope.
40.00 Set a sandstone 14 x 12 x 4 ins., 9 ins. in the ground, for ¼ sec. cor. marked ¼ on W. face; dug pits 18 x 18 x 12 ins. N. and E. of stone, 5½ ft. dist., and raised a mound of earth, 1½ ft. high, 3½ ft. base, alongside.
45.00 Ascend broken mountainous slope.
50.00 Top of ridge, bears E. and W. Descend.
70.00 Ward 30 chs. wide, course W. Leave mountainous, enter rolling land.
80.11 Set a sandstone 18 x 14 x 3 ins., 13 ins. in the ground for cor. to secs. 19, 24, 26 and 30, marked with 4 notches on N. and 2 notches on E. edges; dug pits 18 x 18 x 12 ins., one each sec., 5½ ft. dist., and raised a mound of earth, 2 ft. high, 4½ ft. base, alongside.
Land, mountainous 70 chs.
Land, rolling 10 chs.
Soil, 2d and 4th rate.

North bet. secs. 19 and 24.
Va. 18° 30' E.
Over rolling land.
40.00 Set a sandstone 16 x 14 x 3 ins., 11 ins. in the ground for ¼ sec. cor. marked ¼ on W. face; dug pits 18 x 18 x 12 ins. N. and E. of stone, 5½ ft. dist. and raised a mound of earth, 1½ ft. high, 3½ ft. base, alongside.
50.00 Ascend steep slope of mountain.
79.46 Intersect N. boundary of Wyoming.

V2.

Exterior Boundaries T. 58 N. R. 100 W

Chains 16.74 to a W of .09 mile post which is a pine post 5 ins sq by 5 ft above ground marked Mound on it. Bys. on it. N. 45° E. .85 on E and 1.39 M on W. Sets a sandstone 20 x 8 x 2 ins. 15 ins in the ground for closing cor to Practicable Pts T 58 N. Rs 99 and 100 W. marked C. C. T. 58 N. R. 99 on E and R. 100 on W. Pits with 3 grooves on S and 6 grooves on E and W. Pits; dug pits 24 x 18 x 12 ins. S. E. and W. of stone, crossing on each line. 6 ft. dist. and raised a mound of earth. 2½ ft. high. 5 ft. base, alongside.

Land, mountainous 21.46 Chs.
rolling 50 Chs.

Soil. 2d and 4th rate.

June 10, 1892.

Latitudes, Departures and Closing Errors

Lines Courses and Distances	From bearing	Distance	Latitudes N	Latitudes S	Departures E	Departures W
N boundary	North	229.21	229.21			
E boundary	East	473.76			473.76	
S boundary	South	230.46		230.46		
W boundary	West	472.00		.54		472.00
Meander				.72		
			229.21	231.72	473.76	472.00
		Totals	229.21	472.00		
		Error in Lat. 1.51			Dep. 1.76	

General Description

This Tp is wholly mountainous. Indications of coal are found in the eastern part. A large portion of the Tp is covered with a luxuriant growth of grass which affords excellent winter range for stock.

Attest. L. L. Gray
U. S. Deputy Surveyor

Exterior Boundaries of T. 5 N. R. 99 W.

1

Glenn Survey commenced June 4th, 1902.
at the cor. to Tps. 5-7 and 5-8 N.
Rs. 98 and 99 W. of Glenn Polaris
at its eastern elongation and
determine the true meridian
by laying off the azimuth
of Polaris 21°47' to the west.
at 0.2 M the magnetic bearing
of line established last night
is N. 1° 30' W. and corrected by
table on page 50 manual gives
for mean declination E. 1° 30' E.

From the cor. to Tps. 5-7 and 5-8
N. Rs. 98 and 99 W.
I run
South bet. secs. 31 and 36
Var. E. 1° 30'

Set stone.

2 00 I run N. 7 lks with, course N. E.
record over rough mountainous
land.

2.00 Enter rolling table land

40.00 Set a sandstone 8 x 14 x 2 ins.
13 ins. in the ground for ¼ sec.
cor. marked ¼ on W face; drug
pits 8 x 8 x 12 ins. N and S of
stone, 5½ ft. dist. and raised a
mound of earth 1½ ft. high
3½ ft. base alongside.

80.00 Set a sandstone 12 x 6 x 6 ins. 8 ins.
in the ground for cor. to secs.
25 30 30 and 31 marked with
5 notches on N and 1 notch on
W edges; drug pits 8 x 8 x 12 ins.
in both secs. 5½ ft. dist. and
raised a mound of earth 2 ft.
high 4½ ft. base alongside.
Land, mountainous 64 chs.
rolling table 66 chs.
Soil 2nd and 3rd rate.

321

Approval.

Office of the U. S. Surveyor General.

Cheyenne, Wyoming, December 24, 1892.

The foregoing field notes of the survey of the exterior lines of
T. 57 N., Rs. 97, 98 and 99 W.
T. 58 N., Rs. 97, 98, 99 and 100 W. of the 6th Principal
Meridian, in Wyoming

executed by

L. L. Coleman, U. S. Deputy Surveyor

under his Contract No. 247, dated March 28, 1892, having been critically examined, the necessary corrections and explanations made, the said field notes, and the surveys they describe, are duly approved.

Wm. A. Richards
U. S. Surveyor General.

I certify that the foregoing transcript of the field notes of the above-described surveys in the district of Wyoming, has been correctly copied from the original notes on file in this office.

Wm. A. Richards
U. S. Surveyor General.

322-323

PLAINTIFF'S EXHIBIT 13

5493

5662 ½
Cancelled
✓

(4—679.)

RECEIVED
COMMISSIONER'S LETTER.
NOV 26 1892

FIELD NOTES

OF THE SURVEY OF

For the Sixth Principal Meridian and
For the Auxiliary Meridian West
through
Townships 57 and 58 North.

Of the Meridian,
in the State of Wyoming.

AS SURVEYED BY

J. L. Coleman, U. S. Deputy Surveyor.

Under his Contract No. 47, dated March 6,

Survey commenced June 2,

Survey completed June 12,

(4—679.) 4—691

324

211

57

12th Auxiliary Meridian W. through T. 57 N.

Chains | North bet. secs. 1 and 6.
Va., 15° 30' E.
Over rolling land.
40.00 Set a sandstone 18x12x3 ins., 14 ins. in the ground for 1/4 sec. cor., marked 1/4 on W. face; dug pits 18x18x12 ins. N. and S. of stone, 5 1/2 ft. dist., and raised a mound of earth 1 1/2 ft. high, 3 1/2 ft. base, alongside.
Set a sandstone 24x14x4 ins., 18 ins. in the ground for cor. to Tps. 57 and 58 N., Rs. 100 and 101 W., marked T. 25 on N.E., R. 100 on S.E., T. 57 on S.W. and R. 101 on N.W. faces, with 6 notches on each edge; dug pits 24x18x12 ins. lengthwise on each line N., S., E. and W., 6 ft. dist., and raised a mound of earth 2 1/2 ft. high 5 ft. base, alongside.
Land, rolling.
Soil, stony, 3rd rate.
Vegetation, sage and grass.

From the cor. to Tps. 57 and 58 N., Rs. 100 and 101 W., I run
North bet. secs. 31 and 36.
Va., 15° 30' E.
Ascending gradual & slope.
80.00 Set a sandstone 14x12x3 ins., 10 ins. in the ground for 1/4 sec. cor., marked 1/4 on W. face; dug pits 18x18x12 ins. N. and S. of stone 6 1/2 ft. dist., and raised a mound of earth 1 1/2 ft. high, 3 1/2 ft. base alongside.
80.00 Set a sandstone 14x10x7 ins., 9 ins. in the ground for cor. to secs. 25, 30, 31 and 36 marked with 1 notch on E. and 5 notches in N. edges; dug pits 18x18x12 ins. on each face, 5 ft. dist., and raised a mound of earth 2 ft. high, 4 ft. base, alongside.

12th Auxiliary Meridian W. through Tps. 58 N.

Chains | Land, sloping south.
Soil, 2nd rate.
Vegetation, grass and sage.

North bet. secs. 25 and 30.
Va., 15° 30' E.
Ascending.
8.00 Descend.
40.00 Set a sandstone 18x12x2 ins., 13 ins. in the ground, for 1/4 sec. cor., marked 1/4 on N. face; dug pits 18x18x12 ins. N. and S. of stone 5 1/2 ft. dist., and raised a mound of earth 1 1/2 ft. high, 3 1/2 ft. base, alongside.
45.00 Walk 15 lks. wide, course S. W. and ascend.
80.00 Set a sandstone 28x16x4 ins., 2 ins. in the ground for cor. to secs. 19, 24, 25 and 30, marked with 2 notches on S. and 4 notches on N. edges, and raised a mound of stone 1 1/2 ft. high, 2 ft. base, alongside.
Pits impracticable.
Land, rolling.
Soil, 3rd rate.
Vegetation, grass and sage.

North bet. secs. 19 and 24.
Va., 15° 30' E.
Ascend over rough mountainous land.
40.00 Set a sandstone, 15x10x4 ins., 10 ins. in the ground for 1/4 sec. cor., marked 1/4 on W. face; dug pits 18x18x12 ins. N. and S. of stone 5 1/2 ft. dist., and raised a mound of earth 1 1/2 ft. high, 3 1/2 ft. base, alongside.
69.21 Intersect North boundary line of Wyoming 30.60 chs. W. of 103rd mile post, which is a pine post, 5 ins. square, 5 ft. above ground, marked

T 58 S

12th Auxiliary Meridian W. through T. 58 S.

Claims M.C. No. 1. on N. W. Cor. on S. 45° W. L. on E. and 113 L. on W. sides.
Set a candestone 24 x 10 x 8 ins., 16 ins. in the ground for Closing Cor. to Tps. 57 & 58 S., Rgs. 100 and 101 W., marked C.C. with 6 grooves on E. and W. and 3 grooves on S. sides; dug pits 24 x 18 x 12 ins.
Observing on each line S.E. and W. of stone 6 ft. dist. and raised a mound of earth 2½ ft. high, 5 ft. base alongside.
Land, mountainous 69.21 chs.
Soil, 3rd rate.
Vegetation, grass and sage.
June 2, 1892.

General Description.

Townships 57 N., Rgs. 100 and 101 W., are generally rolling. Some level table land containing good grass and are very valuable for grazing purposes. Townships 58 N., Rgs. 100 and 101 W. are rolling in their southern portions and broken and mountainous in the northern. affords good pasturage.

A. L. Coleman
U. S. Deputy Surveyor.

12th Guide Meridian W. through Tps. 57 & 58 S.

Claims Survey commenced June 2, 1892.
I set my instrument over the Standard Cor. to Tps. 57 & 58 S., Rgs. 96 and 97 W., and at 13 h. 55 m. observed Polaris at eastern elongation and found its magnetic bearing to be 16° 39' E.
N. end of needle 16° 39' E.
Azimuth 1° 48' E.
The sum is the variation 18° 27' E.
I lay off the azimuth of the star 1° 48' to the W. and mark the true meridian as determined.
At 7 a. m., May 12th, 1892, the magnetic bearing of the line established last night is N. 18° 31' W. and the mean declination N. 18° 27' E.
From the Standard Cor. to Tps. 57 & 58 S., Rgs. 96 and 97 W. which is a granite stone 10 x 6 ins., 6 ins. above ground, marked S.C. with 6 notches on N.E. and W. edges, with mound of stone alongside. I run
North bet. Secs. 31 and 36.
Va. 18° 27' E.
Descending N. slope.
19.00 Enter low bottom land.
22.43 Right bank of Sage Creek 5 links wide, course S. 74° E.
25.00 Enter dense willow brush.
26.28 Leave brush, foot of perpendicular bluff 30 ft. high, thence over level bottom.
40.00 Set a post 3 ft. long, 3 ins. square with marked stone 12 ins. in the ground for ¼ sec. cor., marked ¼ S on W. face; dug pits 18 x 18 x 12 ins. N. and S. of post 5½ ft. dist. and raised a mound of earth 1½ ft. high, 3½ ft. base around post.
57.00 Leave bottom, enter gently rolling land.

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List of Names.

A list of the names of the individuals employed by Augustus L. Coleman, U. S. Deputy Surveyor, to assist in running, measuring and marking the lines and corners described in the foregoing field notes of the survey of the 6th Guide Meridian west from the 14th Standard Parallel North to the north boundary of Wyoming. The 12th Auxiliary Meridian West, north from the 14th Standard Parallel North to the north boundary of Wyoming. The 14th Standard Parallel North west from the 12th Guide Meridian through ranges 97, 98, 99, 100 and 101 west of the 6th Principal Meridian, in Wyoming, showing the respective capacities in which they acted:

W. R. Henderson, Chainman
W. R. Kellogg, Chainman
P. W. Abbott, Chainman
J. F. Leaser, Chainman
C. A. Mullins, Flagman
H. E. Miller, Axeman

Final Oath of Assistants:

We hereby certify that we assisted Augustus L. Coleman, U. S. Deputy Surveyor, in surveying all those parts or portions of the 6th Guide Meridian West, north from the 14th Standard Parallel North to the north boundary of Wyoming. The 12th Auxiliary Meridian West, from the 14th Standard Parallel N. to the north boundary of Wyoming and the 14th Standard Parallel North, west from the 12th Guide Meridian through Ranges 97, 98, 99, 100 and 101 West of the 6th Principal Meridian, Wyoming, as are represented in the foregoing field notes as having been surveyed by him and under his direction; and that said survey has been in all respects, to the best of our knowledge and belief, well and faithfully surveyed, and the corner monuments established, according to the instructions furnished by the U. S. Surveyor General for Wyoming

W. R. Henderson, Chainman
W. R. Kellogg, Chainman
P. W. Abbott, Chainman
J. F. Leaser, Chainman
C. A. Mullins, Flagman
H. E. Miller, Axeman

Subscribed and sworn to before me this Eleventh day of August, 1872.

SEAL

J. W. Chapman
U. S. Deputy Surveyor
Wyo.

Extent nearly 1 Sheet.

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Final Oath of U. S. Deputy Surveyor.

I, Augustus L. Coleman, U. S. Deputy Surveyor, do solemnly swear that in pursuance of instructions received from William A. Richards, U. S. Surveyor General for Wyoming, bearing date of the 1st day of March, 1872, I have well, faithfully, and truly, in my own proper person, and in strict conformity with the instructions furnished by the U. S. Surveyor General for Wyoming, the surveying manual, and the laws of the United States, surveyed all those parts or portions of the 2d Guide Meridian West, north from the 10th Standard Parallel N. to the north boundary of Wyoming; the 12th Auxiliary Meridian W, north from the 11th Standard Parallel N. to the north boundary of Wyoming, the 10th Standard Parallel N. west from the 12th Guide Meridian, the 6th Principal Meridian, in the state of Wyoming, as are represented in the foregoing field notes as having been surveyed by me, and under my directions; and I do further solemnly swear that all the corners of said survey have been established and perpetuated in strict accordance with the surveying manual, printed instructions, the special written instructions of the U. S. Surveyor General for Wyoming, and in the specific manner described in the field notes, and that the foregoing are the true field notes of such survey; and should any fraud be detected, I will suffer the penalty of perjury under the provisions of an Act of Congress approved August 8, 1846.

Augustus L. Coleman
U. S. Deputy Surveyor.

Subscribed and sworn to before me this 21st day of August, 1872.

Wm A. Richards
U. S. Surveyor General
for Wyoming.

Approval.

Office of the U. S. Surveyor General,

Cheyenne, Wyo. November 21st, 1874.

The foregoing field notes of the survey of the 2d Guide Meridian and 12th Auxiliary Meridian West through Tps. 57 and 58 N. in Wyoming

executed by A. L. Coleman, U. S. Deputy Surveyor under his Contract No. 247, dated March 8, 1872, having been critically examined, the necessary corrections and explanations made, the said field notes, and the surveys they describe, are hereby approved.

Wm A. Richards
U. S. Surveyor General.

I certify that the foregoing transcript of the field notes of the above-described surveys in the District of Wyoming, has been correctly copied from the original notes on file in this office.

Wm A. Richards
U. S. Surveyor General.

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PLAINTIFF'S EXHIBIT 14

Original

Certified copy of plat of field notes filed Wyoming asst. to Sec. Interior Nov. 2, 1883. Surveyor Gen. Wyoming Nov. 18, 1883

Paid for Report $64.72

Field Notes

of the Survey of the North Boundary of Wyoming Territory. Made in the years A.D. 1879 and 1880, in pursuance of Survey and Instructions under the contract with the Secretary Commissioner of the General Land Office bearing date April 18th 1879.

Northern Boundary Wyoming Territory.

FIELD NOTES.

pine post. 4 feet long. was squared 6 inches and 2 feet deep in the earth. and marked as follows. The North face "NBT". on the South face "NT". on the East face "B L 1890". and on the West face "N". Dug two pits. each 3 feet square to 18 inches deep. one East and the other West. and each 4 feet distant therefrom. About the post built a conical mound of earth. 3 feet high. 6 feet in diameter. The corner falls in a shallow basin. and notes taken to objects to distant landmarks. A large cedar bears. cylindrical in form bears N. 21° 45' W. about 8 chains distant. A large cedar tree bears N. 88° W. about one mile distant. A little sandstone stone bears 10° W. 2.15 chains distant. Soil. east dry clay. unfit for cultivation and generally known as Bad Lands. Bunch grass on small flats and some sage. Barometer 24.05 inches. August 9th. 1890.

10 2nd. Mile.

East on a true line. Variation 19° E.

20 00 Across the head of a dry creek which drains towards South West.

40 00 Dry creek which runs South West. Barometer reads 24.00 inches.

60 00 Across a creek bed running South. There are a few low pine trees along the creek.

Northern Boundary Wyoming Territory

FIELD NOTES.

24 00 Barometer reads 24.00 inches

80 00 At the North of the mound planted a pine post 4 feet long 6 inches square. 2 feet deep in the earth. and marked as follows. On the North face NBT. on the South face "NT". on the East face "B L 1890. and on the West face "N". Dug two pits. each 3 feet square. 18 inches deep. one East and the other West of the post and each 4 feet distant therefrom. About the post built a mound of earth. 3 feet high. 6 feet in diameter. The corner stands between two flattened trees. on a cattle pathway. one mile south the sage brush. good bunch grass between the soil. dark clay. The surface has a light loose pulverulent clay unfit for agriculture. From the post a large stream. runs. bears 2 20' W 8 chains distant. Prominent mountain on South side of Clarke Fork valley. bears 2 88° 00' W. A shale clay rock bears N 80° 00' W 4 chains distant there is no timber in sight. Surface rises gradually towards the East. Barometer reads 24.05 inches. August 18th. 1890.

10 4th Mile.

East on a true line. Variation 19° 40' E.

22 00 Across a dry creek bed running South East.

30 00 Across a dry creek bed flowing South East.

40 00 Barometer reads 24.00 inches

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Northern Boundary Wyoming Territory.

FIELD NOTES.

2	00	Offset North, 36 links to the 45th parallel, where planted a dry stone post 4 feet long square 3 inches, 2 feet over in the earth and marked as follows. On the North face "MON T." on the South face "WYC." on the East face "45° N.L. 1990"; and on the West face "0 M." Quo Cut pits, each 3 feet square by 18 inches deep, one East and the other West, and each 6 feet distant therefrom.
		About the post built a conical mound of earth 3 feet high by 6 feet in diameter. From the post a pile of sandstone bears N. 2° 30' E. about 500 feet distant.
		Point of clay-cliff on the West side of a ravine, bears S. 36° 30' E. This post stands near the head of a ravine which extends 2 or 3 miles towards the South. Surface is composed of a dry rounded arenaceous clay, of no use for agriculture. There are small tracts of good bunch grass, and large quantities of sage. Neither timber nor water within several miles.
		The posts for the 101st, 102nd, 103rd, 104th, and 105th miles, were packed on horses from Black Fox River. There is a kind of white clay stone out-cropping in line parallel to the on both sides of the canon above noted. The surface is badly broken. Barometer reads 25 50 inches.
		August 19th, 1880.

Northern Boundary Wyoming Territory.

FIELD NOTES.

105th. Mile.

East on a true line. Variation 19° 40' E.

53	00	Cross a dry creek in a stone North. Barometer reads 25 inches.
91	00	Forty rods links North of this point on the 45th parallel, planted a zinc mark post 4 feet long in 3 inches square, 2 feet over in the earth, and marked as follows. On the North face "MON T." on the South face "WYC." on the East face "45° N.L. 1990" and on the West face "105 M." Quo Cut pits, each 3 feet square by 18 inches deep, one East and the other West, and each 6 feet distant therefrom. About the post built a conical mound of earth, 3 feet high by 6 feet in diameter.
		The post stands on the East side of a sandstone and clay ridge, about half way down.
		The variation determined from this point where the 105th mile post stands. The following bearings were taken from a point on the tangent, 155 links West and 40 links South of the post. A truncated cone bears N. 21° 30' E. 6.07 miles distant. The North point of the Elk Mountains bears N. 82° 40' E. estimated 20 miles distant. The Northernmost and Southernmost one of a group of conical mounds bears S. 16° 20' E. estimated three miles distant. The Easternmost one of the same group, bears S. 9° 20' E. estimated 2½ miles distant. Red Peak, previously noted, bears N. 50° 40' W. 33 miles distant. A high cliff of sandstone rocks bears N. 38° 30' W. about 6 chains distant.

very pumiceous alkali surface. A little fourier grass, sage and greasewood. Stair sandstone rock outcrops in all directions. Soil and barren vision. Will known as Bad Lands. No water nor timber near. Barometer 25.15 inches. August 14th. 1880.

108th Mile.

East on a true line. Variation 16° 00' E

30 00 Cross a dry ravine or wash, course towards the North.

Barometer 25.20 inches.

60 00 Barometer 25.15 inches.

90 00 The point for the 108th mile corner, which is 90 links North of the tangent and 90.00 chains East of the 107th mile corner, falling in a dry wash out of this hill. The post and mound was built on the tangent. 90.00 chains East of the 108th mile mound. It is as follows; A dry pine post - 4 feet long 5 inches square, 2 planed 2 feet deep in the earth and marked as follows: On the North face N.C.N.T.; on the South face W.Y.C.; on the East face "45° N.L. 1880" and on the West face "108 M.W.C." Thus 2 pits, each 2 feet square by 1½ inches deep, one East and the other West, and each 2 feet distant therefrom. About the post built a mound of earth 2 feet high by 4 feet in diameter. From the post a true sandstone shale rock bears S 62° 25' E 7 chains distant

The highest point of a dry sandstone ridge, bears

E 9° 55' W. A similar dry ridge bears N 25° 15' W about ½ mile distant. A high conical ridge covered with grass and sage bears N 3° 32' W 4 miles distant. Various mineral soil, fourish grass and small sage in sight. Barometer 25.20 inches. August 14th. 1880.

109th Mile.

East on a true line. Variation 16° 20' E

0 00 Barometer reads 25.15 inches.

85 00 Cross a dry wash bearing North. Barometer reads 25.20 inches.

53 00 Barometer reads 25.20 inches.

73 00 Cross a dry wash bearing North.

90 00 The 109th mile corner North of true point on the 45th parallel, planted a dry pine post - 4 feet long by 5 inches square, 2 feet deep in the earth and marked as follows: On the North face "NORTH"; on the South face "WYO."; on the East face "45° N.L. 1880", and on the West face "109 M.C."

Two pits 2 feet square by 1½ inches deep, one East and the other West, and each 2 feet distant therefrom. Around the post built a mound of earth 2 feet high and 4 feet in diameter. From the post an immense sandstone rock on top of a hill bears N 20° 21' E about 25 chains distant. A round sandstone boulder on top of same rock bears N 00° 00' E about 30 chains distant.

A dry ravine 100 yards from same rock bears S 40° 00' W. about ½ mile distant. The hill West and South very hard,

Northern Boundary Wyoming Territory.

FIELD NOTES.

clear soil. but improving as we go Eastward.
The first stands in a small grass bottom, which is
covered with good grass. Barometer 25.25 inches
August 19th. 1880

109 M. Mile.

East on a true line. Variation 14° 00'

20 00 Begin to ascend a ridge. the base of which are covered
with scrub pine and cedar. Barometer reads 25.35 inches.

40 00 Barometer reads 25.10 inches.

80 00 101 Links North of the mound on the 40th. parallel standing
a dry cedar post - set into a 8 inch square pit dug
in the earth. and marked as follows. On the North face
"MON", on the South face "WYO". on the East face "40"
MIL 1880". on the West face "109 M." The pit was filled with 8
feet square by 8 inches deep. one boat and the other
West. and rock. dirt mixed thereon.
About the post built a mound of earth 8 feet high by 6
feet in diameter. From this corner the point of ridge
bears N. 18° 30' E. about 21 chains distant.
An isolated butte having a barometer rock on the sum-
mit. bears N. 49° 50' E. about 25 chains distant.
The point of a small ridge bears S 0° E 12 chains
distant. Soil. dry mountain. and rock of various.
To obtain pure water must go down creek two miles from
here a barometer reading here Barometer 25.35 inches.

Northern Boundary Wyoming Territory.

FIELD NOTES.

Quarter 12 th. 1880.

100th. Mile.

East on a true line. Variation 19° 0' E.

0 0 0 Barometer made 25.20 inches.

63 0 0 Barometer made 25.00 inches.

0 0 0 Barometer made 25.50 inches.

0 0 0 Barometer made 25.00 inches.

40 00 22 links North of the corners on the 45th parallel, marked a stone mound, 4 feet long, 3 inches square, 2 feet over in the earth, and marked as follows. On the North face "1880 T", on the South face "W.Y.C.", on the East face "45° N. 99°", and on the West face "100 M" One mile each 24 feet square in 4 inches over, on East and the West line, and each 24 feet distant therefrom. About the mark, built a mound of earth, 24 feet high by 6 feet in diameter. From the mark the summit of which same ridge bears N. 68° 25' E. about 20 chains distant. One of a conical mound bears S 45° 15' E. about 40 chains distant. A white tree bears S 7° 00' E. 232 links distant. Set 4 mi. rails. A little east and South cross, there is a high sandstone rock West of the corner, and a few iron nuts and clear true between the corner and ridge Barometer made 25.50 inches.

Quarter 13th. 1880.

Department of the Interior
General Land Office
Washington D.C. Nov. 2. 1881

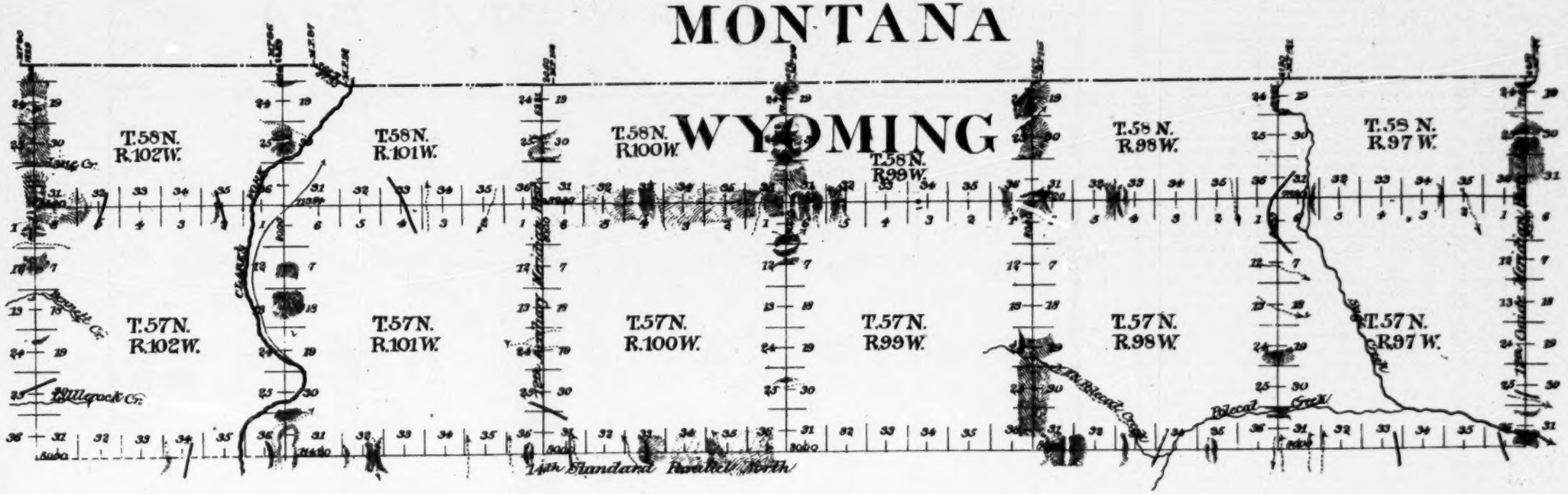
The foregoing Astronomical Observations, computations, final results and field notes of the survey of the Northern Boundary of the Territory of Wyoming, executed by Rollin J. Reeves U.S. Astronomer and Surveyor, under his contract of April 18. 1879, having been critically examined, the necessary explanations made, and requisite corrections in the field ordered to be made in accordance with the letter and terms of the Honorable, the Secretary of the Interior, dated Oct. 24. 1881; the said Astronomical Observations, computations, final results and field notes of survey of the said Northern Boundary of the Territory of Wyo. ming, are hereby approved.

N. C. McFarland
Commissioner

335-336

EXTERIOR LINES

Scale 2 miles = 1 inch. Mag. Var. East.

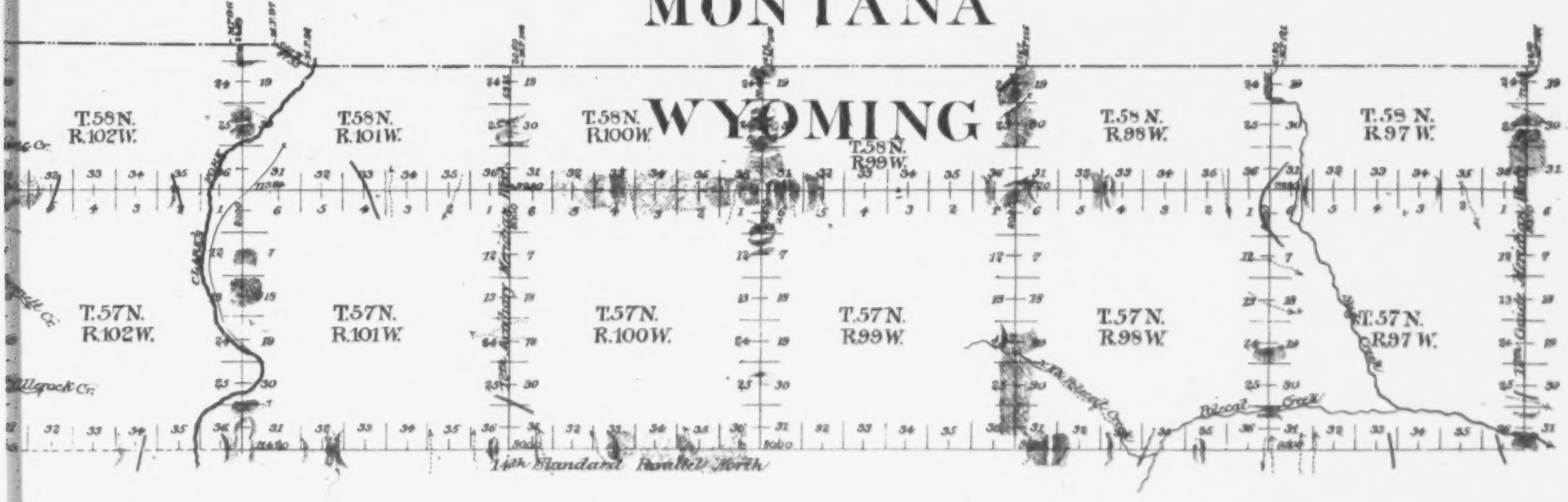

MONTANA
WYOMING
T.58N. R.102W.
T.58N. R.101W.
T.58N. R.100W.
T.58N. R.99W.
T.58 N. R.98W.
T.58 N. R.97 W.
T.57N. R.102W.
T.57N. R.101W.
T.57N. R.100W.
T.57N. R.99W.
T.57N. R.98W.
T.57N. R.97 W.
Clarks Fork
Big Horn Mountains
Big Horn Mountains
Big Horn Mountains

PLAINTIFF'S EXHIBIT 15

...D WITH
...'S LETTER.
NOV 26 1892

EXTERIOR LINES

Scale 8 miles = 1 inch. Mag. Var. East.



Surveys Protracted	By Whom Surveyed	Date of Contract	Amount of Survey M.	Chs	Lks	When Surveyed	Magnetic Declination
Township Lines	A. L. Coleman	March 8 1892	81	61	33	May 29 June 16 92	12° 31 East.
14th Stand. Par.	" "	" "	30	34	20	23-27 1892	18° 30' "
6th Guide Mer. W.	" "	" "	8	71	64	June 12 "	18° 27' "
Aux. " "	" "	" "	9	69	21	" 2 "	18° 30' "
Corrections	" "	" "	1	60	39		
Township lines at minimum rates			57	24	59		
" " intermediate "			24	36	94		

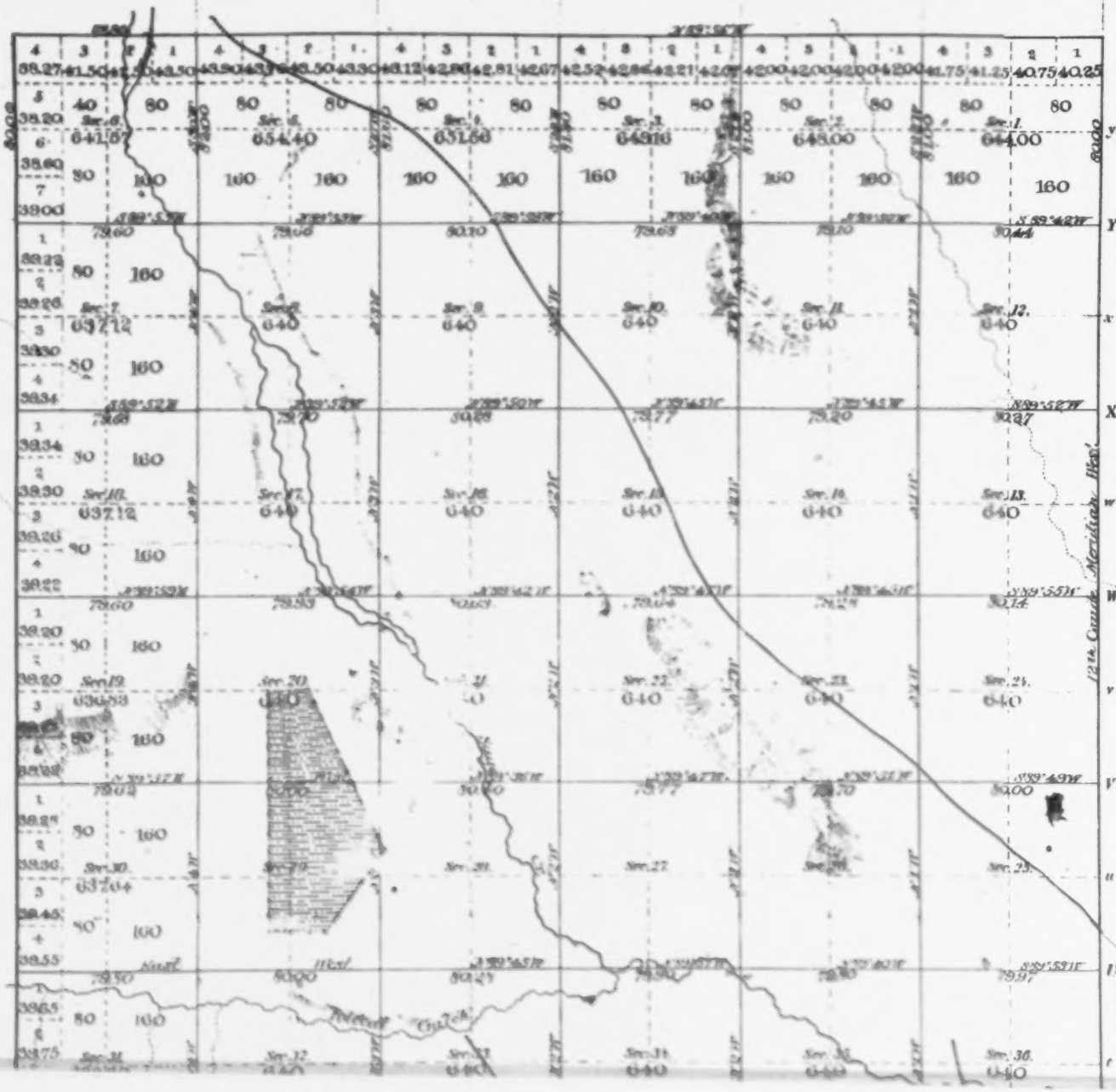
I hereby certify that the above diagram of the 14th Standard Parallel North, Ranges 97, 98, 99, 100 & 101 West, the 12th Guide Meridian West through Townships 57 and 58 North, the 12th Auxiliary Meridian West in Townships 57 and 58 North, the Exterior lines of Townships 57 and 58 North, Ranges 97, 98, 99, 100, 101 and 102 West of the 6th Principal Meridian, Wyoming, is strictly conformable to the field notes of the survey thereof on file in this office which have been examined and approved.

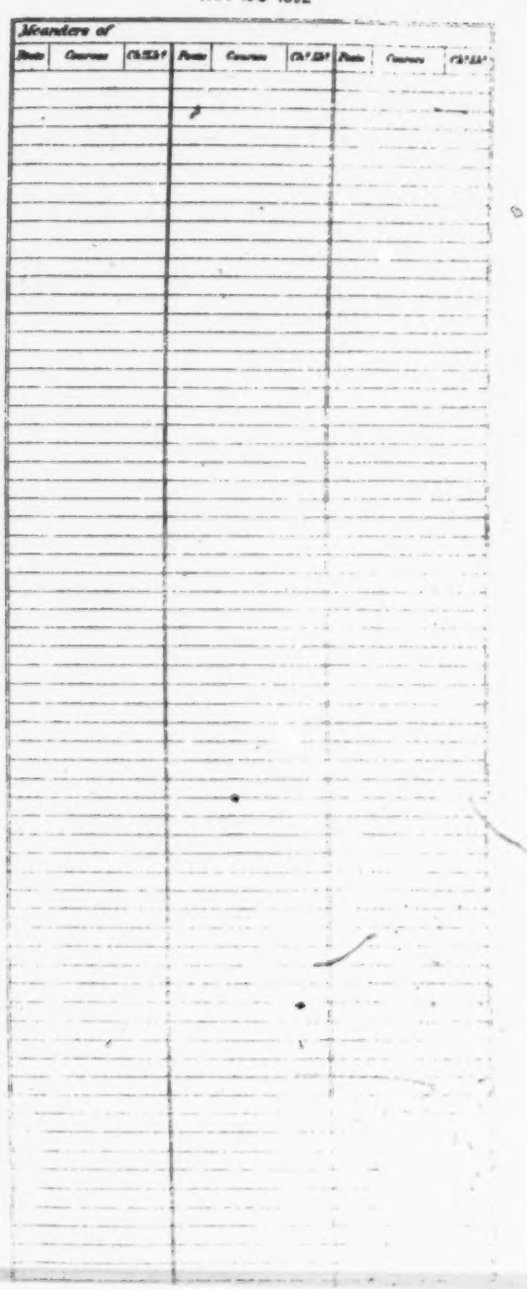
Surveyor Generals Office.
Cheyenne, Wyo. Nov 26, 1892.

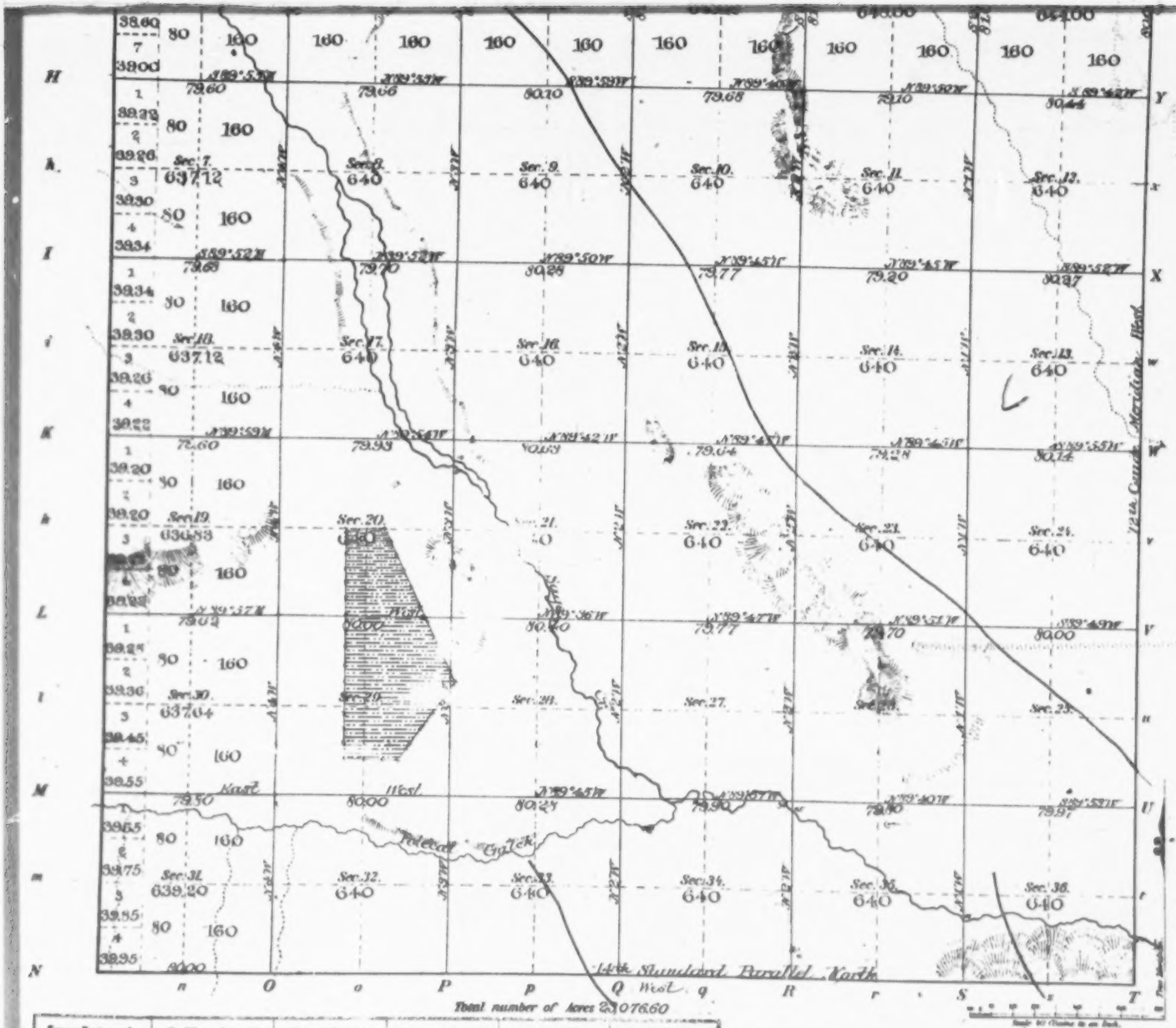
Wm A. Richards
Surveyor General.

PLAINTIFF'S EXHIBIT 16

Township No. 57 North ... Range No. 97 West of the 6th Principal Meridian







Total number of Acres 23076.60

Surveys Designated	By Whom Surveyed	Date of Contract	Amount of Surveys M. Ch. Lks.	When Surveyed	Magnetic Declination
Township lines					
Subdivisions	A. L. Coleman	March 8, 1892	60 02 2	June 24 to 29 1892	15° 27' East.

The above Map of Township 1.n 57 North of Range 1.e 97 West of the 6th Principal Meridian, Wyoming is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

Surveyor Generals Office
Cheyenne Wyo. Oct. 26, 1892

M.r A. Richards
Surv.r Gen.l

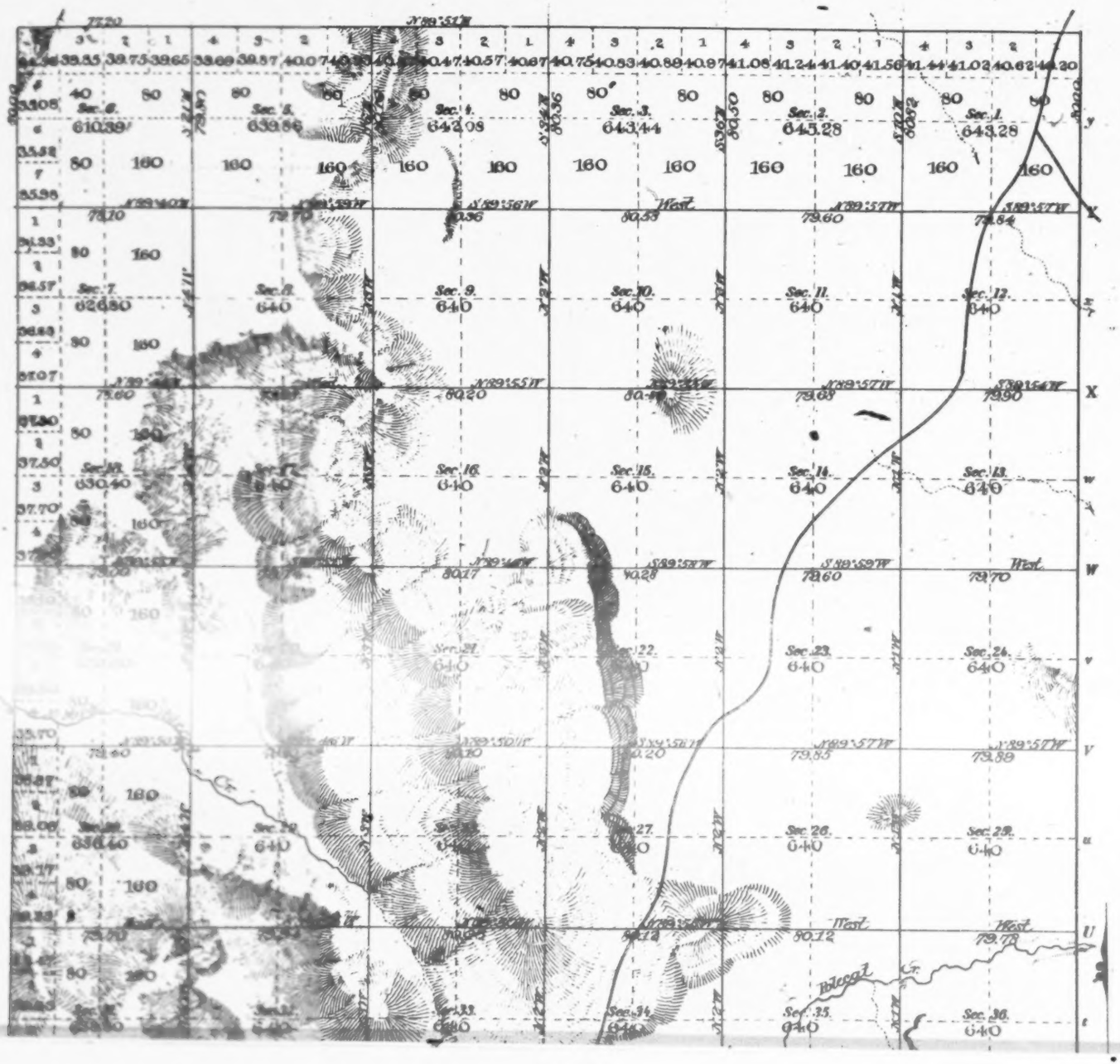
Filed July 24 94
L.F.V.le

338-340

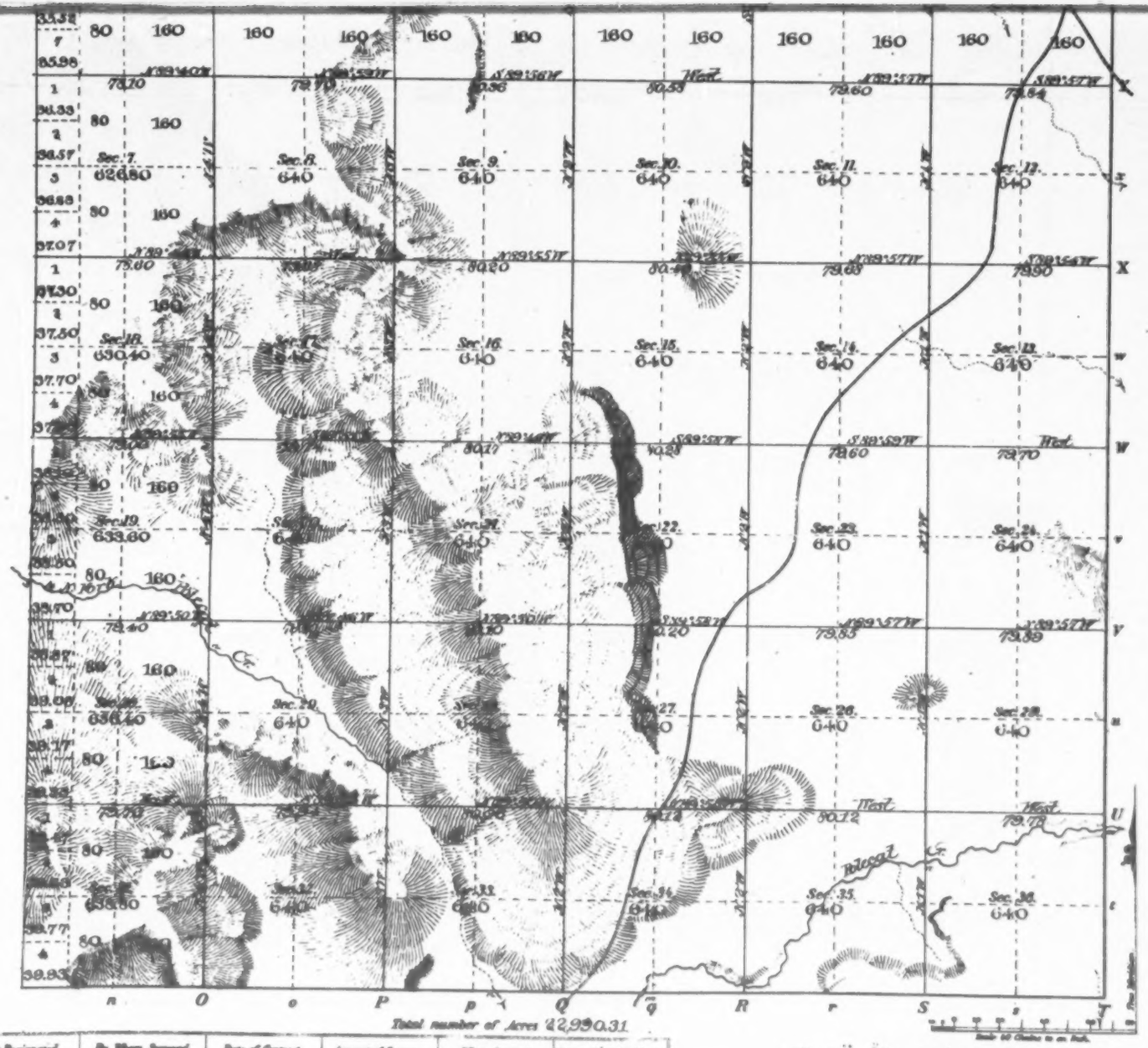
PLAINTIFF'S EXHIBIT 17

3

Township No. 57 North Range No. 98 West of the 6th Principal Meridian



Boundary of



Total number of Acres 22,990.31

Surveys Designated	By Whom Surveyed	Date of Contract	Amount of Surveys M. Chs. Lks.	When Surveyed	Magnetic Declination
Township lines Subdivisions	A.L. Coleman	March 8, 1892	59 73 73	July 1 to 1892	15° 28' East

The above Map of Township No. 57 North of Range No. 98 West of the 6th Principal Meridian, Wyoming is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

Surveyor General's Office
Cheyenne Wyo. Nov. 24, 1892

Wm A. Richards
Surv. Gen.l

Sketch of Subdivisional lines of minimum value
" " intermediate

	M.	Chs.	Lks.
	33	77	63
	23	73	70

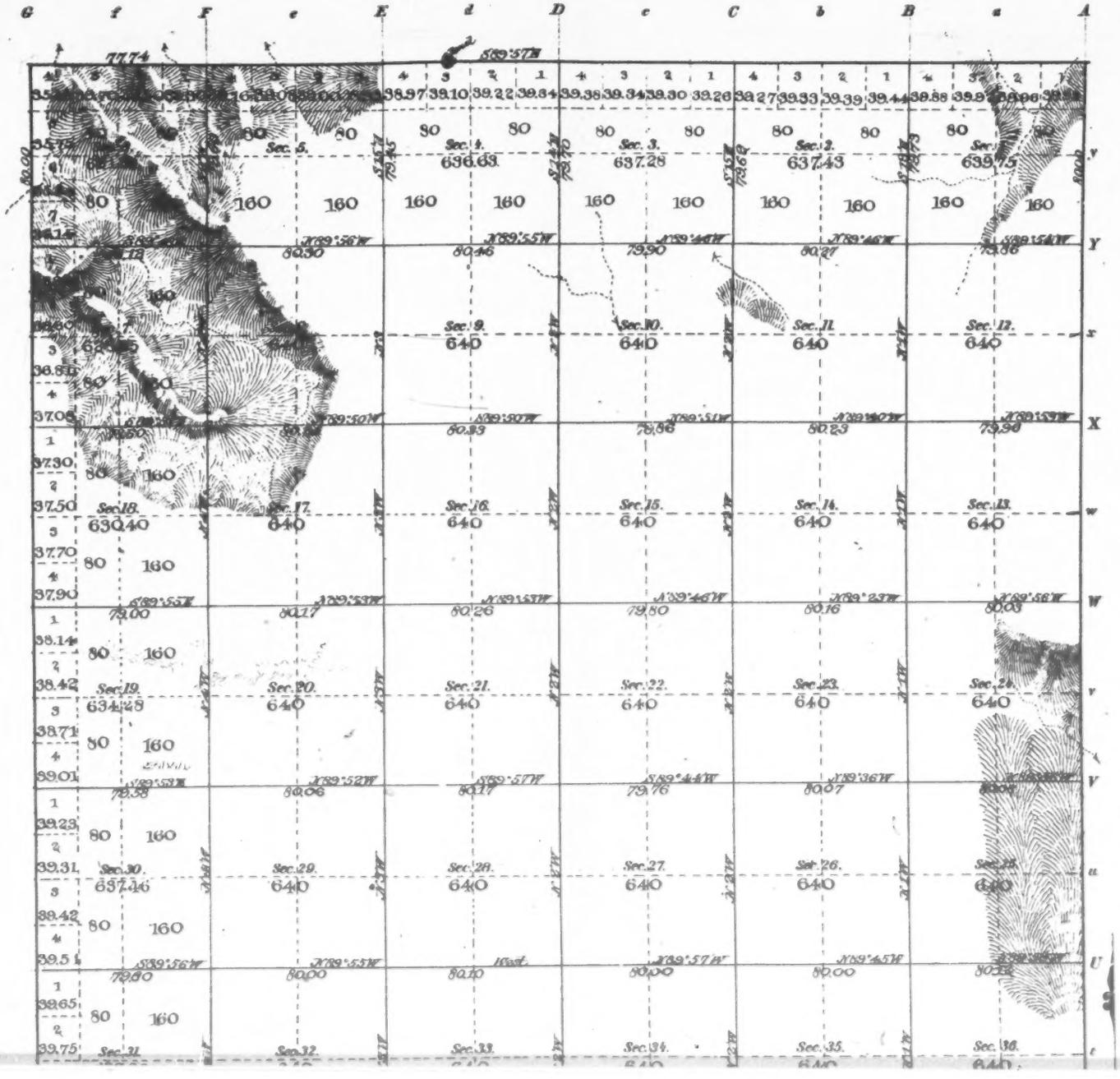
Scale of July 20 1894
C.F.G.

341-343

PLAINTIFF'S EXHIBIT 18

3

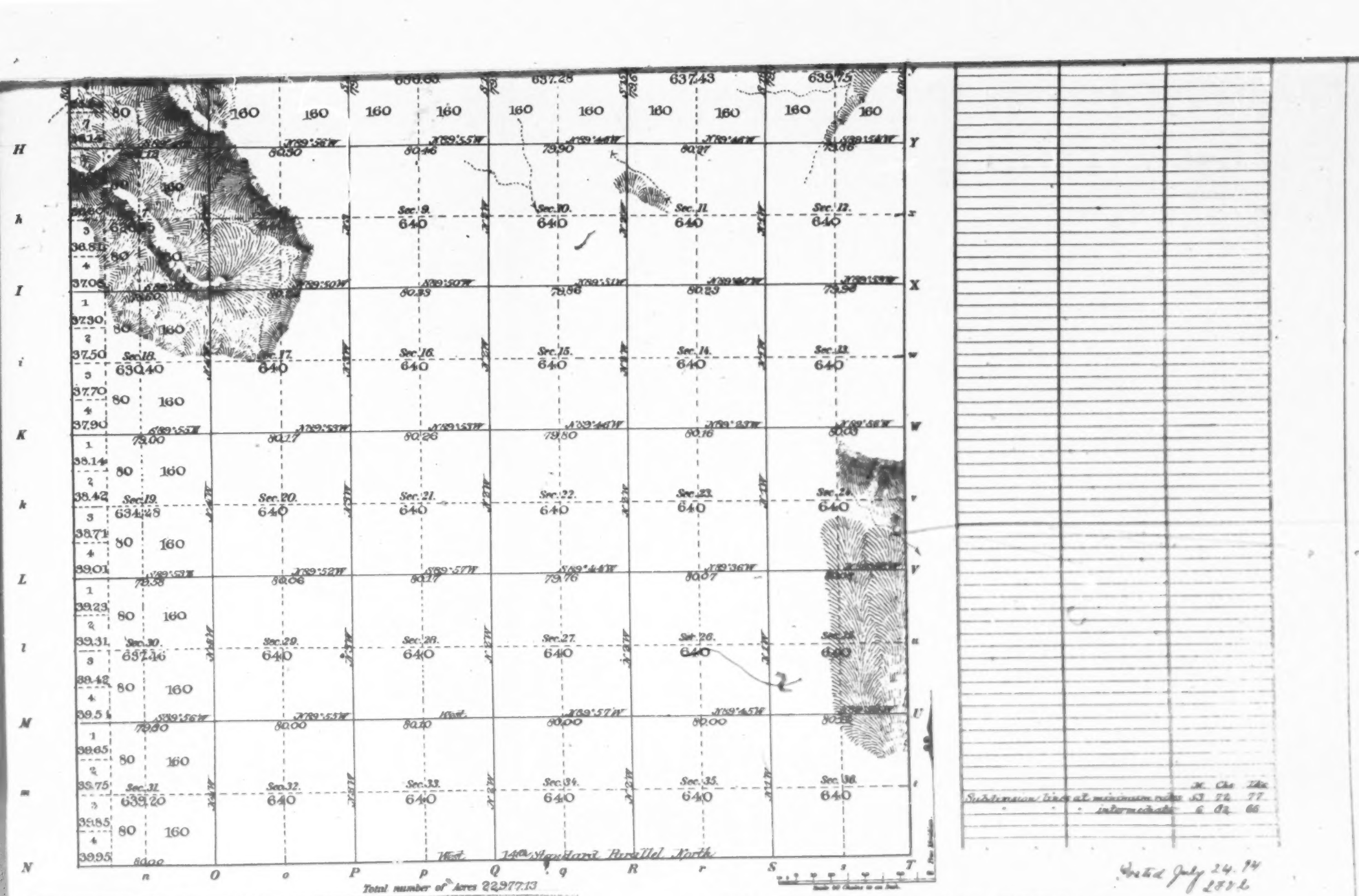
Township No. 57 North _ Range No. 99 West of the 6th Principal Meridian



RECEIVED
OCT 26 1892

Meanders of

Rods	Courses	Ch. Lks	Rods	Courses	Ch. Lks	Rods	Courses	Ch. Lks



Total number of Acres 22,977.13

Surveys Designated	By Whom Surveyed	Date of Contract	Amount of Surveys M. Ch. Lks.	When Surveyed	Magnetic Declination
Township lines Subdivisions	A.L. Colemas	March 8 1892	59 75 48	June 24 & 29 1892	15° 27' East

The above Map of Township 1.N 57 North of Range 1.E 99 West of the 6th Principal Meridian, Wyoming is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved

Surveyor Generals Office, Cheyenne Wyo. Dec 26, 1892

Wm A. Richards Surr Genl

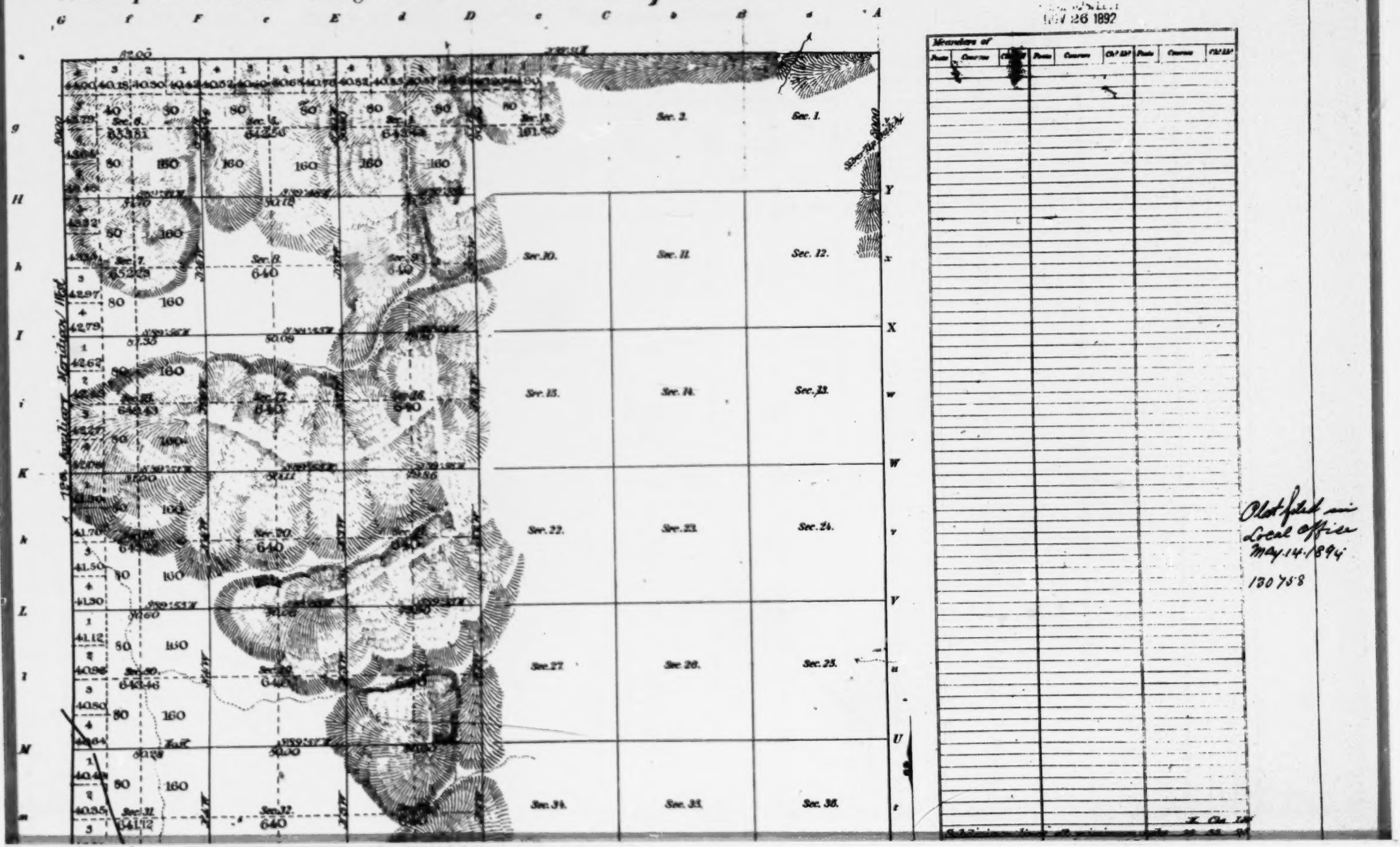
	M.	Chs	Lks
Subdivision lines at minimum rates	53	72	77
" " intermediate	6	02	66

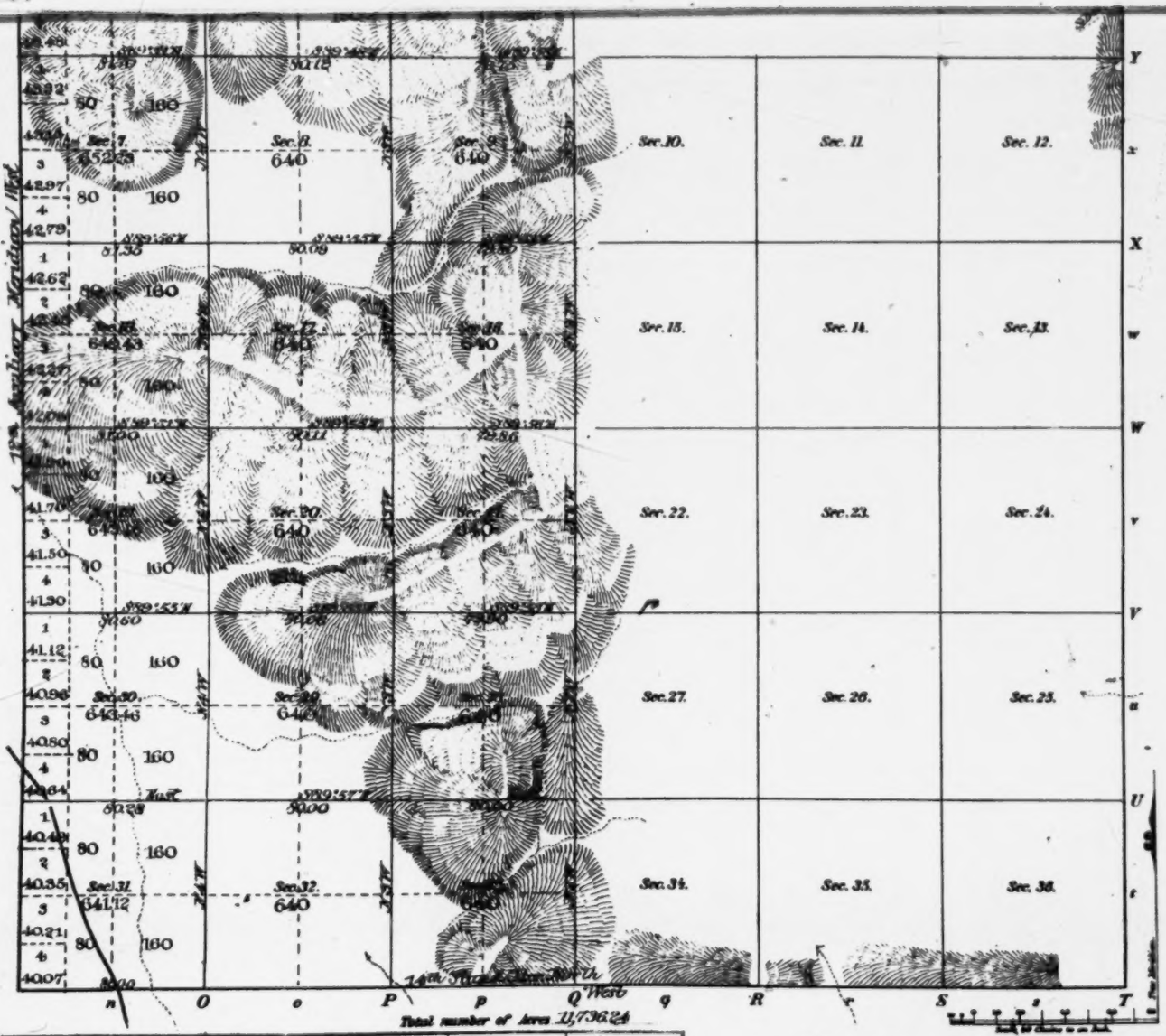
Dated July 24. 94

343-344

PLAINTIFF'S EXHIBIT 19

Township No. 57 North Range No. 100 West of the 6th Principal Meridian





Surveys Designated	By Whom Surveyed	Date of Contract	Amount of Surveys M. Ch. Lks.	When Surveyed	Magnetic Variation
Township Lines Subdivisions	N.L. Coleman	March 8, 1892	33 05 71	Aug 8-10 1892	15° 30' East

The above Plat of Township No. 57 North of Range No. 100 West of the 6th Principal Meridian, Wyoming is strictly conformable to the field notes of the survey thereof, on file in this Office, which have been examined and approved.

Surveyor General's Office, Cheyenne Wyo. Oct. 26/92

Wm A. Richards
Surv. Gen.l

Subdivision lines of minimum value
Intermediate

Plat filed in Local office May 14. 1894
130758

9/11/42

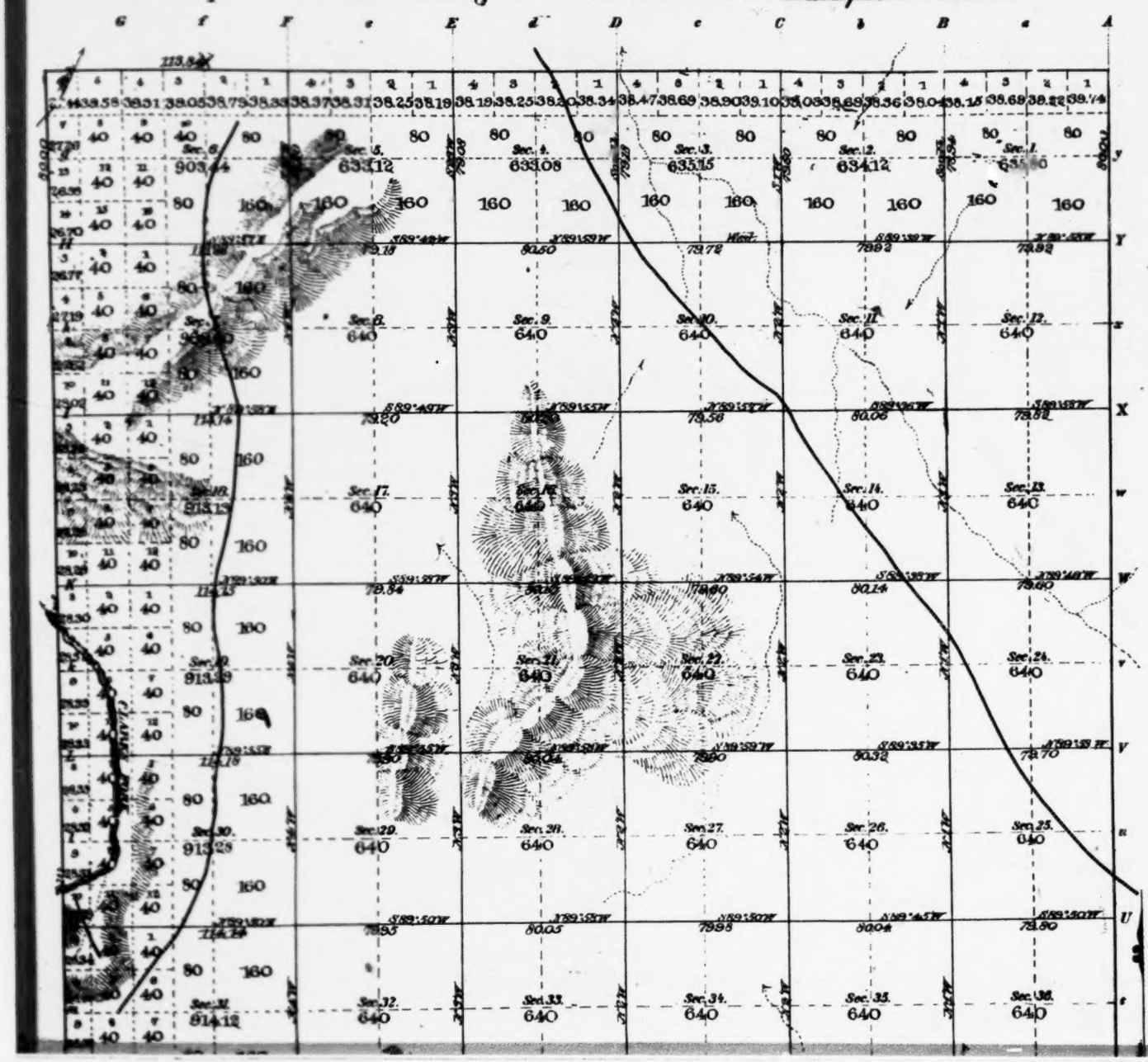
Posted Nov. 22. 1894. J.G.

345-348

PLAINTIFF'S EXHIBIT 20

2

Township No. 57 North Range No. 101 West of the 6th Principal Meridian

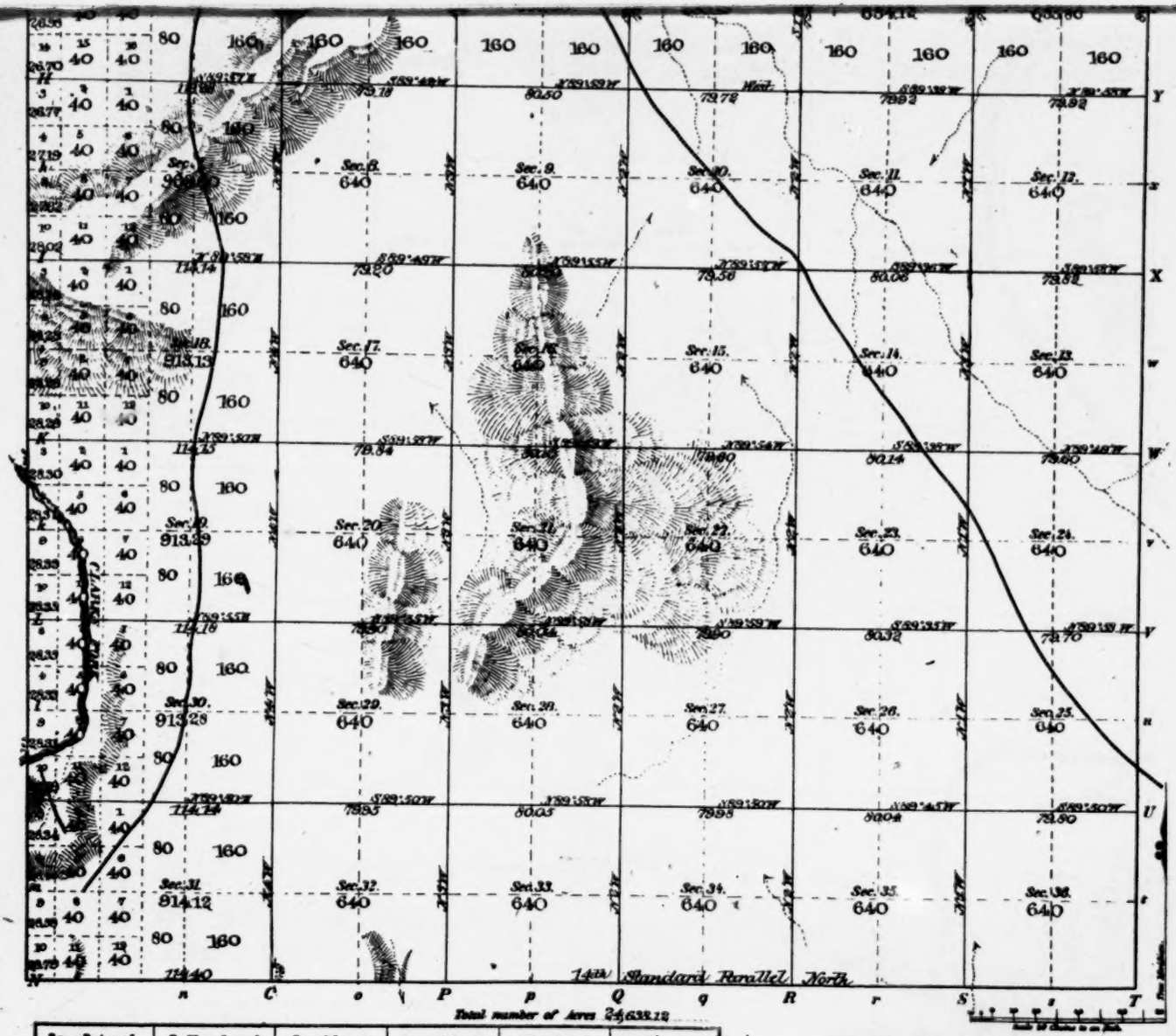


SURVEYOR'S LETTER
NOV 28 1892

Boundaries of

State	Counties	Old Line	State	Counties	Old Line	State	Counties	Old Line

	M.	Chs	Links
Subdivisions of all meridional miles	56	69	39
" " " " "	4	12	34



Survey Designated	By Whom Surveyed	Date of Contract	Amount of Survey M.	Ch.	Lks.	When Surveyed	Magnetic Declination
Township Lines Subdivisions	A.L. Coleman	March 8, 1892	62	02	83	July 16 to 21 1892	16° 30' E.

Subdivisions	M.	Ch.	Lks.
Subdivisions of minimum, miles	56	69	99
" intermediate "	3	12	84

The above Map of Township No. 57 North of Range No. 101 West of the 6th Principal Meridian, Wyoming, is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

Surveyor Generals Office.
Cheyenne, Wyo. Nov. 26/1892

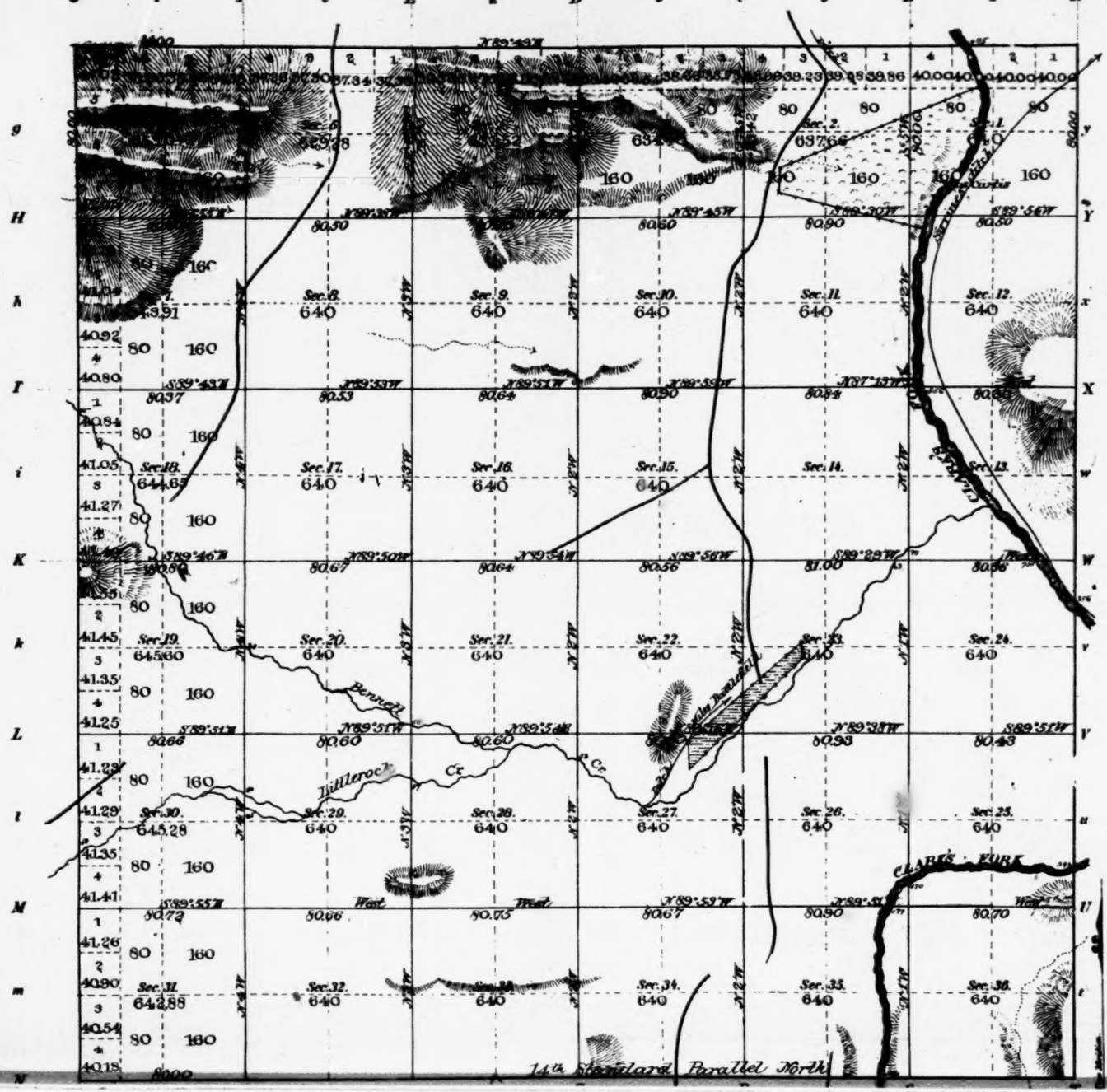
Wm A. Richards
Surv. Gen.l

July 4 to July 24, 92
1 Ch 2 L.

247-248

PLAINTIFF'S EXHIBIT 21

Township No. 57 North . Range No. 102 West of the 6th Principal Meridian, Wyoming.

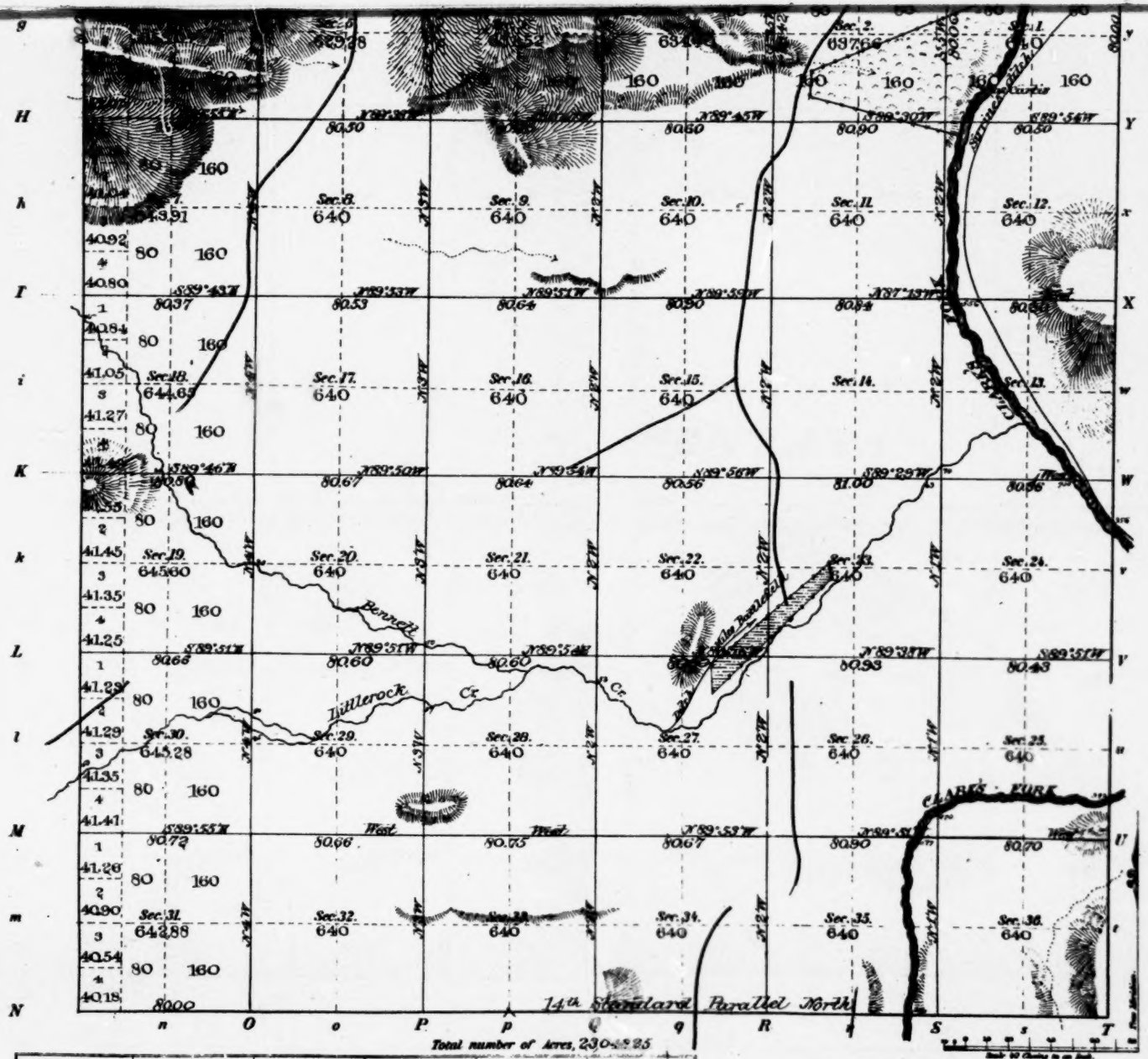


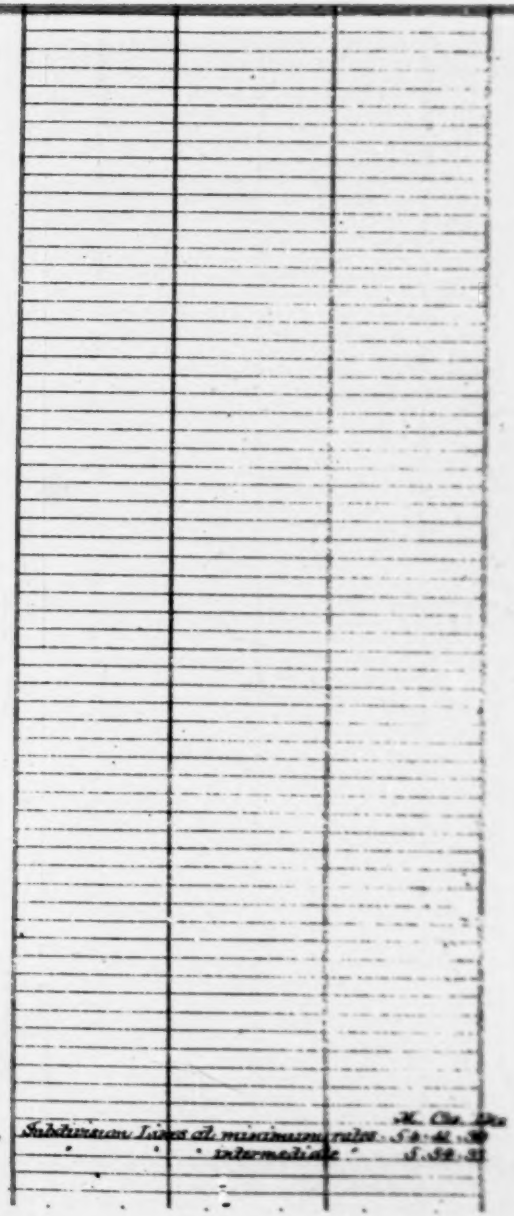
SURVEYOR'S LETTER.
NOV 26 1892

Meanders of

Points	Courses	Ch's & Lks	Points	Courses	Ch's & Lks	Points	Courses	Ch's & Lks

M. Chs. Lks
Subdivisional Lines at minimum rates . S. 4 . 41 . 30
" " " intermediate " S. 54 . 31





Surveys Designated	By Whom Surveyed	Date of Contract	Amount of Surveys M. Ch. Lks.	When Surveyed
Township lines Subdivisions	A.L. Coleman	March [illegible] 1892	60 15 61	May 1-5-1892 18th St. Mast.

The above Map of Township 1.N 57 North of Range 1.E 102 West of the 6th Principal Meridian, Wyoming is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

Surveyor Generals Office
Cheyenne Wyo Nov. 26, 1892

Wm A. Richards
Surv. Gen.l

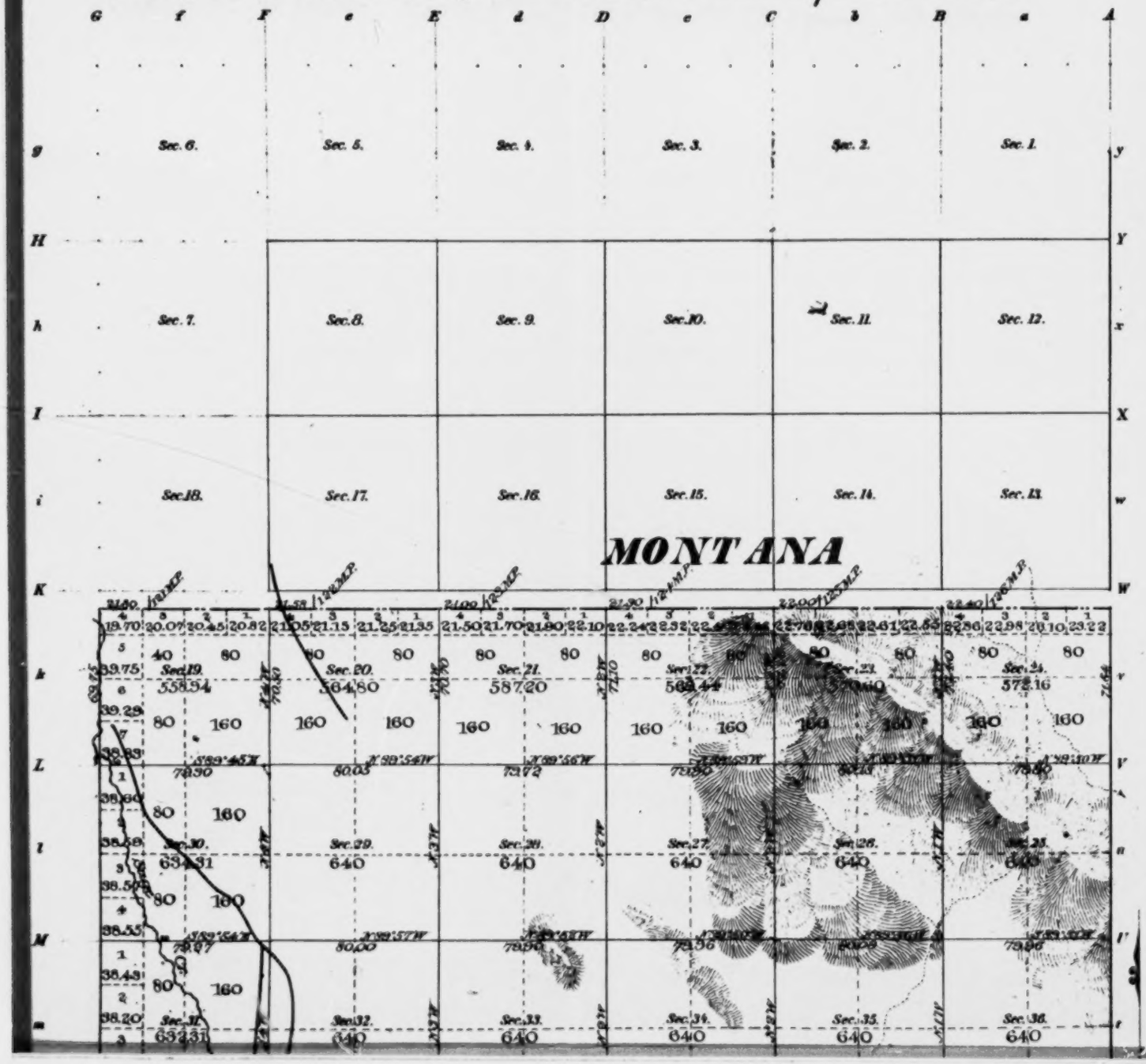
Contd J : 24, 74
2384

PLAINTIFF'S EXHIBIT 22

5

Township No. 58 North Range No. 97 West of the 6th Principal Meridian

SUR. GEN'S. LETTER.
NOV 26 1892

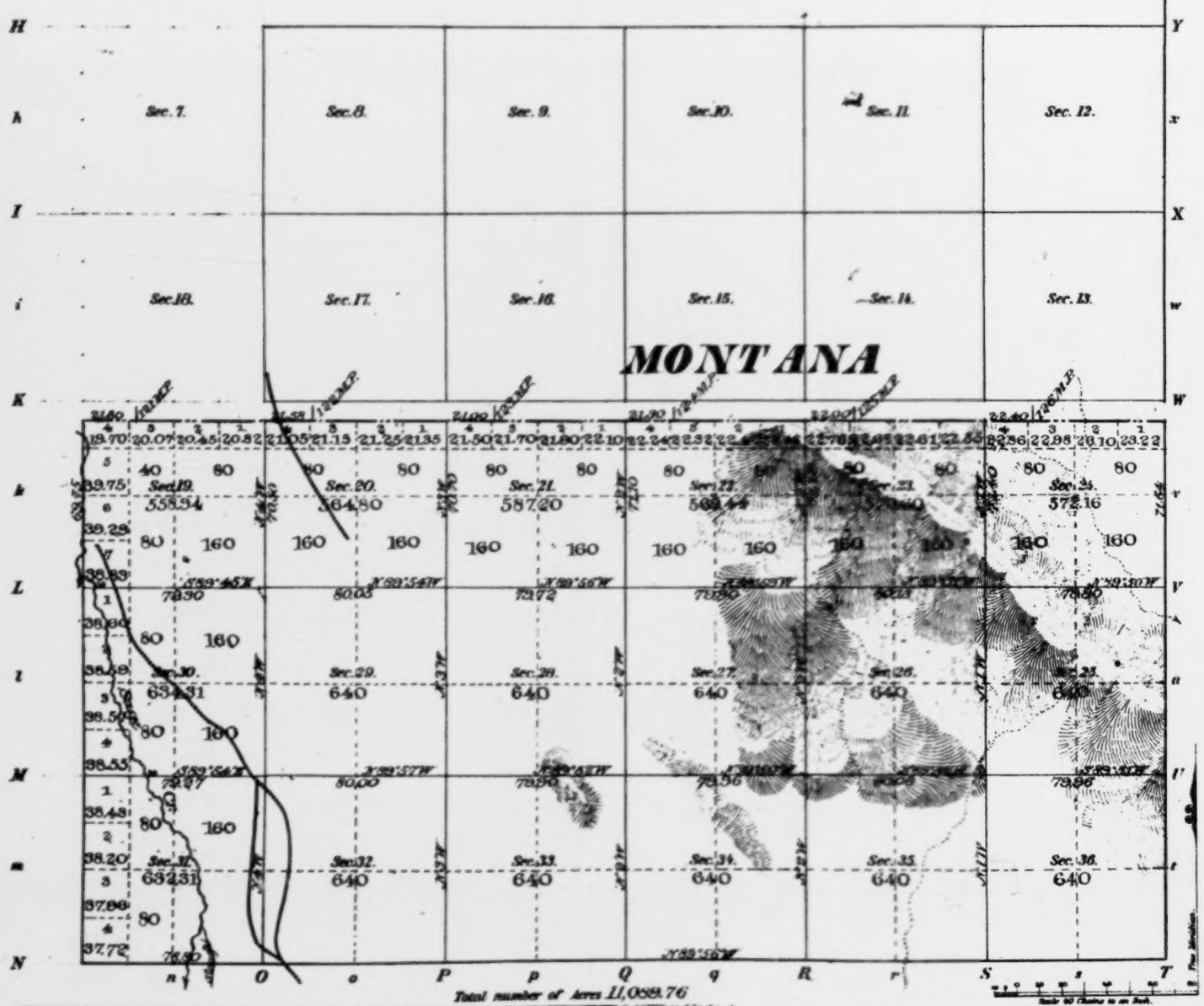


Meanders of

Posts	Courses	Ch. Lks.	Posts	Courses	Ch. Lks.	Posts	Courses	Ch. Lks.

Subdivision Lines at approximate values 28 69 41

MONTANA



Total number of Acres 11,089.76

Surveys Designated	By Whom Surveyed	Date of Contract	Amount of Surveys M. Ch. Lks.	When Surveyed	Magnetic Dec.
Township lines					
Subdivisions	A. L. Coleman	March 5, 1892	26 33 24	June 17 20, 1892	19° 27' East.
Connections			1 28 28		

The above Plat of Township 1.N 58 North of Range 1.E 97 West of the 6th Principal Meridian, Wyoming is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

Surveyor Generals Office.
Cheyenne Wyo. Nov. 26, 1892

Wm A. Richards
Surr. Genl

Subdivision lines at maximum rates	12	69	41
" intermediate "	7	43	73
Connection " " minimum "	1	28	28

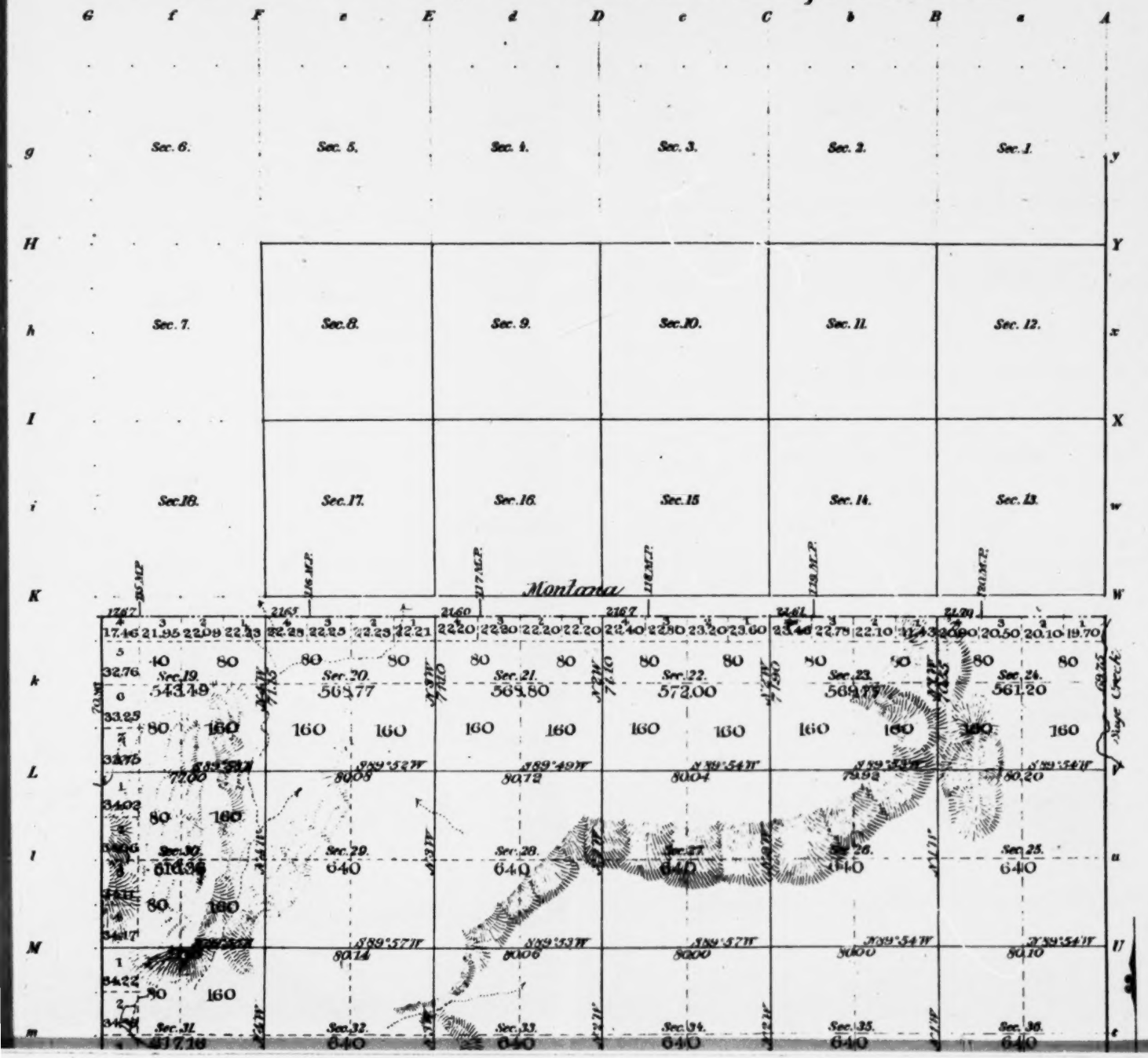
Dated July 25. 1894
L.H.L.

351-353

PLAINTIFF'S EXHIBIT 23

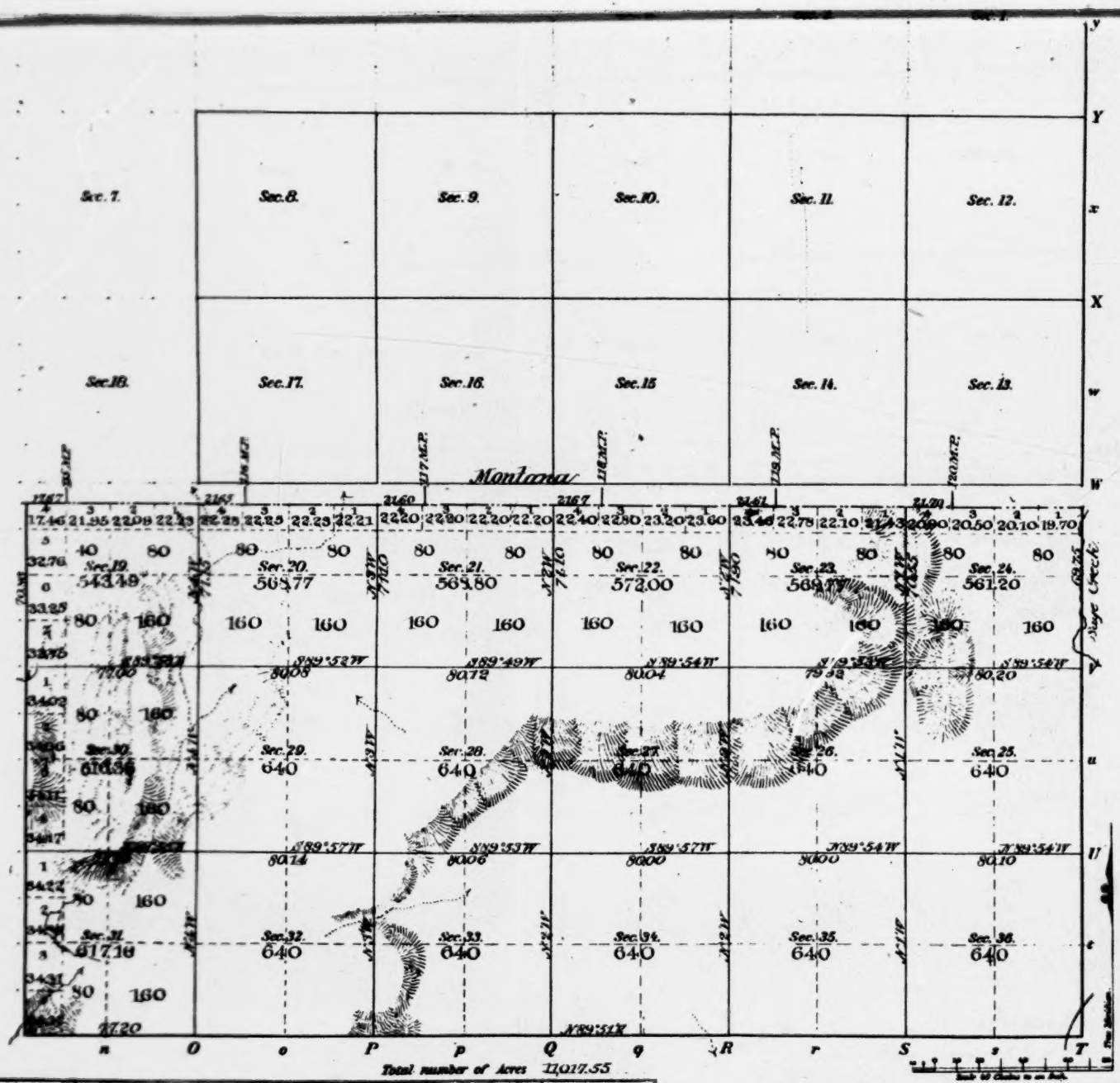
3

Township No. 58 North Range No. 98 West of the 6th Principal Meridian



Boundaries of

Bearing	Courses	Chains	Bearing	Courses	Chains	Bearing	Courses	Chains



Subdivision	M.	Chs.	Lks.
Subdivision lines at minimum rates	31	22	11
" " intermediate "	5	09	45
Connection " " minimum "	1	35	33

Posted July 25. 1894
J. J. L.

Surveys Designated	By Whom Surveyed	Date of Contract	Amount of Surveys M.	Ch.	Lks.	When Surveyed	Magnetic Declination
Township lines							
Subdivisions	M. L. Coleman	March 8, 1892	26	30	56	July 20-22, 1892	15° 28' East
Connections	" "	" "	1	28	23	" "	" "

The above Map of Township No. 58 North of Range No. 98 West of the 6th Principal Meridian, Wyoming is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

Surveyor General's Office.
Cheyenne Wyo. Nov. 26, 1892

Wm A. Richards
Surv. Gen.l

PLAINTIFF'S EXHIBIT 24

3

Township No. 58 North Range No. 99 West of the 6th Principal Meridian

SURVEYOR GENERAL'S LETTER.
NOV 26 1892

Meanders of

Prom	Course	Chains	Prom	Course	Chains	Prom	Course	Chains

Sec. 6. Sec. 5. Sec. 4. Sec. 3. Sec. 2. Sec. 1.

Sec. 7. Sec. 8. Sec. 9. Sec. 10. Sec. 11. Sec. 12.

Sec. 18. Sec. 17. Sec. 16. Sec. 15. Sec. 14. Sec. 13.

Montana

M.C.P. 109 M.C.P. 110 M.C.P. 111 M.C.P. 112 M.C.P. 113 M.C.P. 114 M.C.P. 116

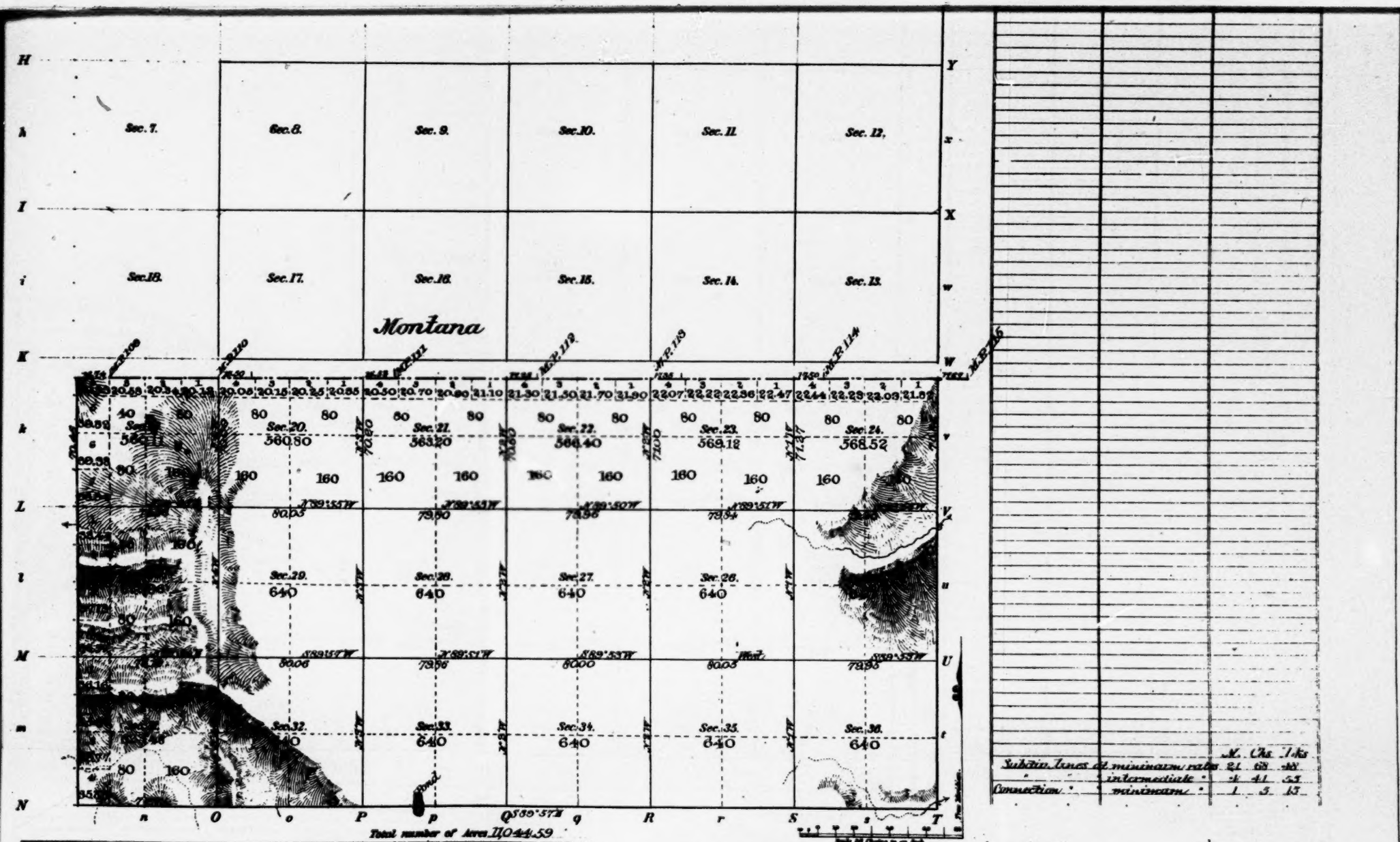
Sec. 19. 560.11 Sec. 20. 560.80 Sec. 21. 563.20 Sec. 22. 566.40 Sec. 23. 569.12 Sec. 24. 568.52

Sec. 29. 640 Sec. 28. 640 Sec. 27. 640 Sec. 26. 640

Sec. 32. 640 Sec. 33. 640 Sec. 34. 640 Sec. 35. 640 Sec. 36. 640

Subdiv. lines at minimum rate 21 68 45

M. Chs. Links



Surveys Designated	By Whom Surveyed	Date of Contract	Amount of Surveys M. Chs. Lks.	When Surveyed	Magnetic Declination
Township lines					
Subdivisions	M.L. Coleman	March 8, 1892	26 30 05	July 13-15, 1892	15° 30 East
Connections	" " "	" " "	1 5 15	" " "	" " "

The above Map of Township No. 58 North of Range No. 99 West of the 6th Principal Meridian, Wyoming is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

Surveyor General's Office, Cheyenne Wyo. Nov. 26, 1892

Wm A. Richards
Surv. Gen.

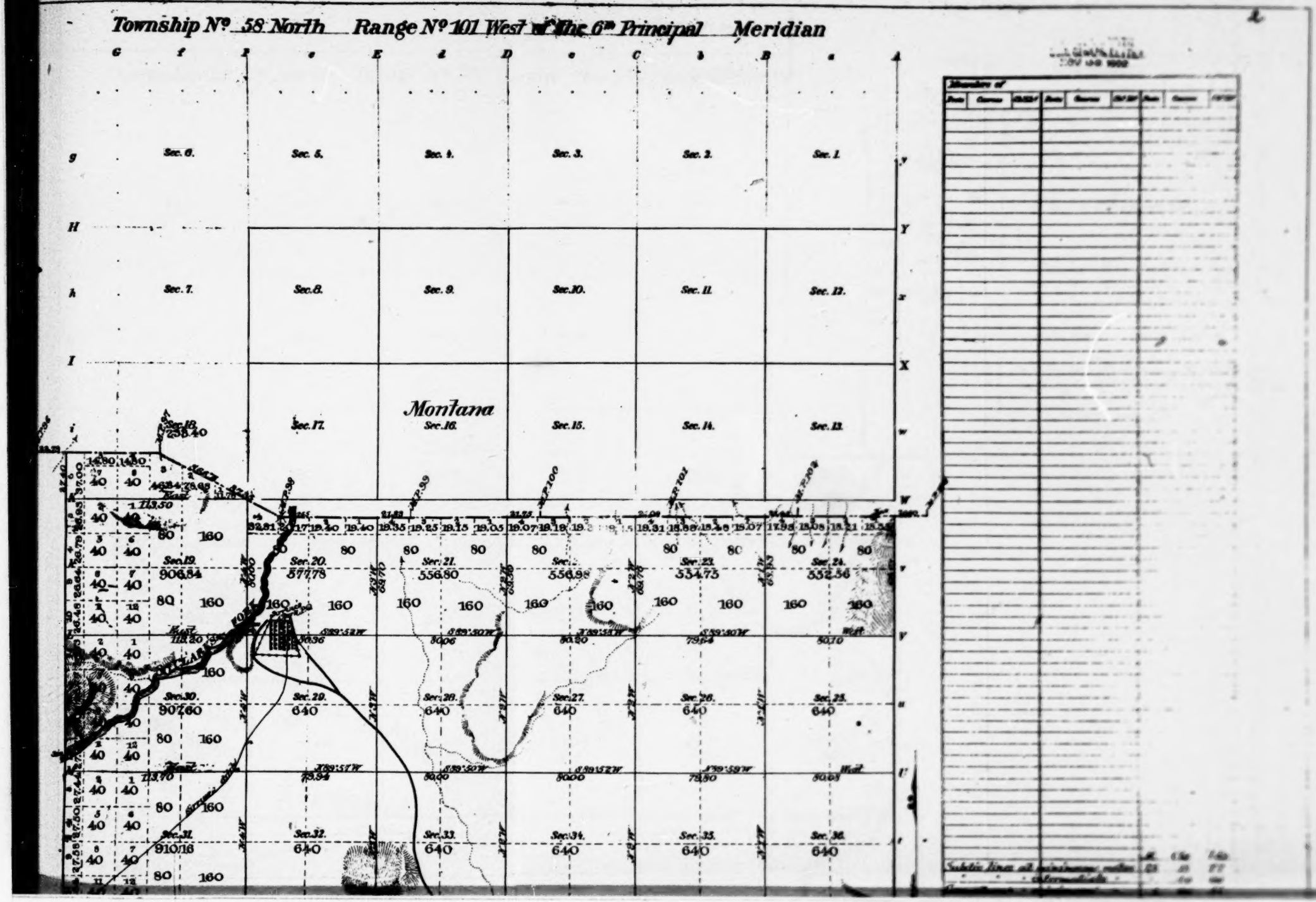
Ld. July 24. 94
LFM Co.

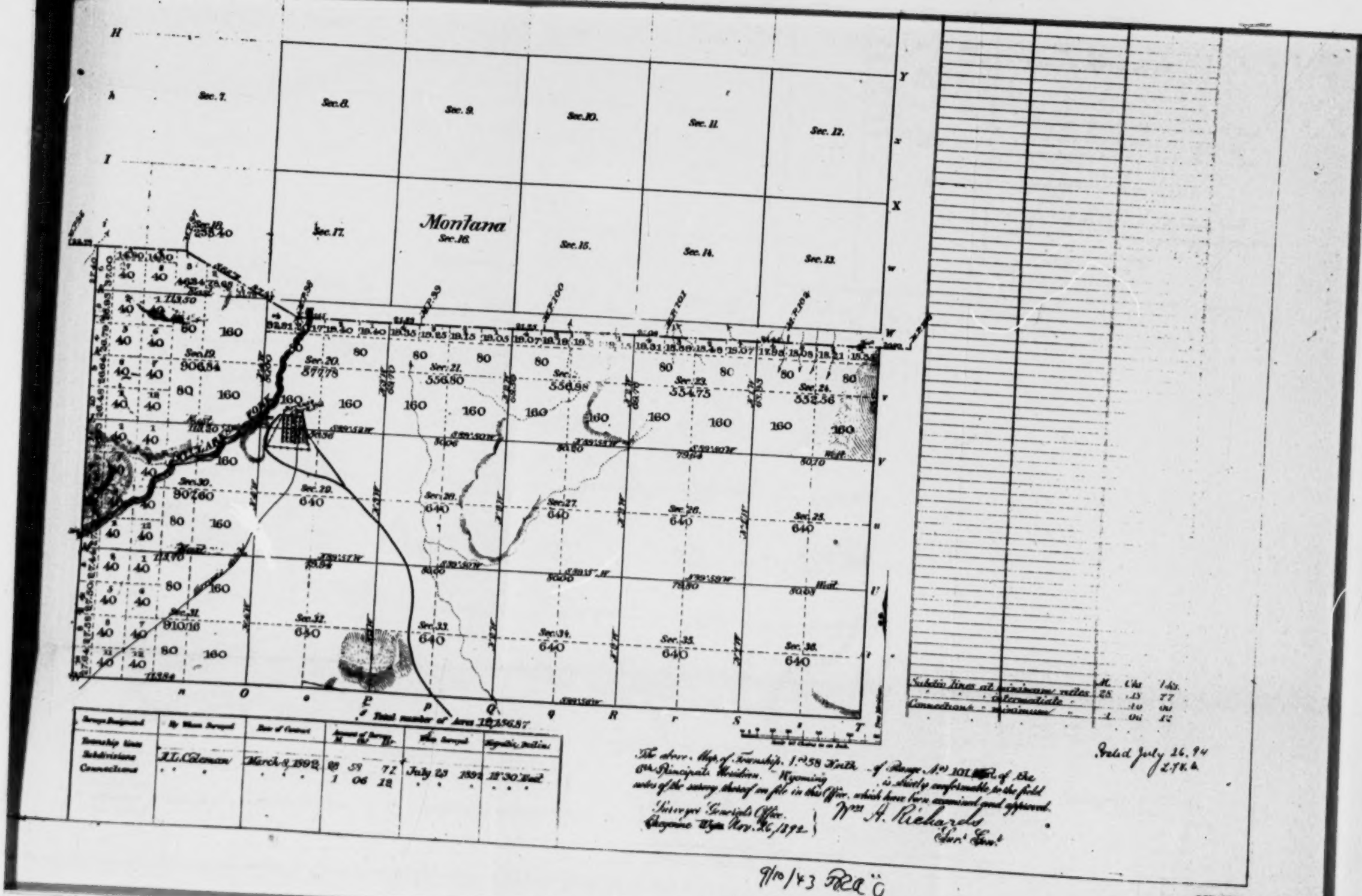
9/10/43 FRA 0

385-356

PLAINTIFF'S EXHIBIT 35

Township No. 58 North Range No. 101 West of the 6th Principal Meridian





Surveys Designated	By Whom Surveyed	Date of Contract	Amount of Survey	When Surveyed	Magnetic Declination
Township lines	J.L. Coleman	March 9 1892	28 59 77	July 23 1894	11° 30' East
Subdivisions			1 06 12		
Connections					

The above Map of Township 1 South North of Range 101 West of the 6th Principal Meridian, Wyoming is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

Surveyor General's Office
Cheyenne Wyo Nov 26/1894

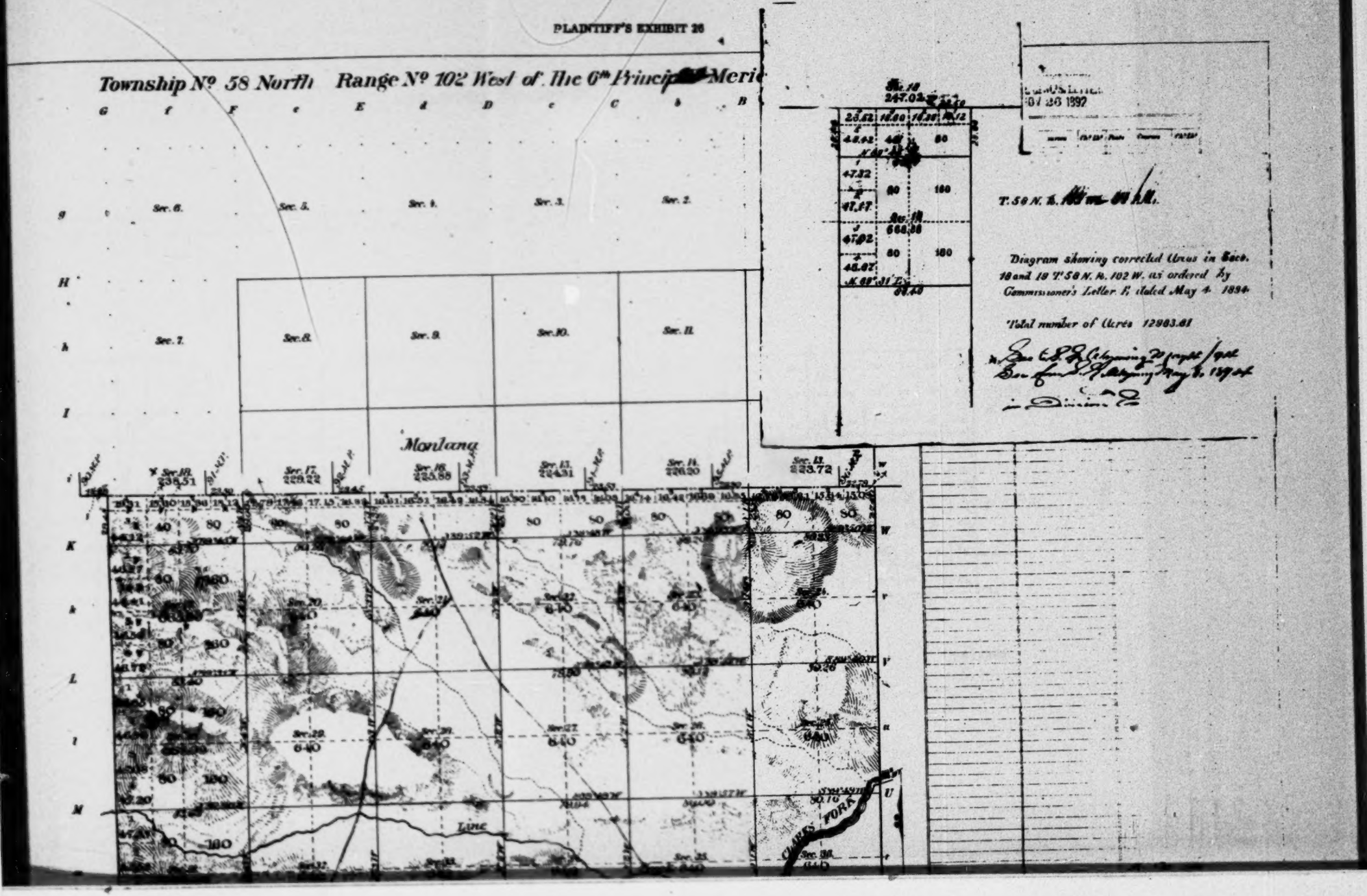
Wm A. Richards
Surv. Gen.

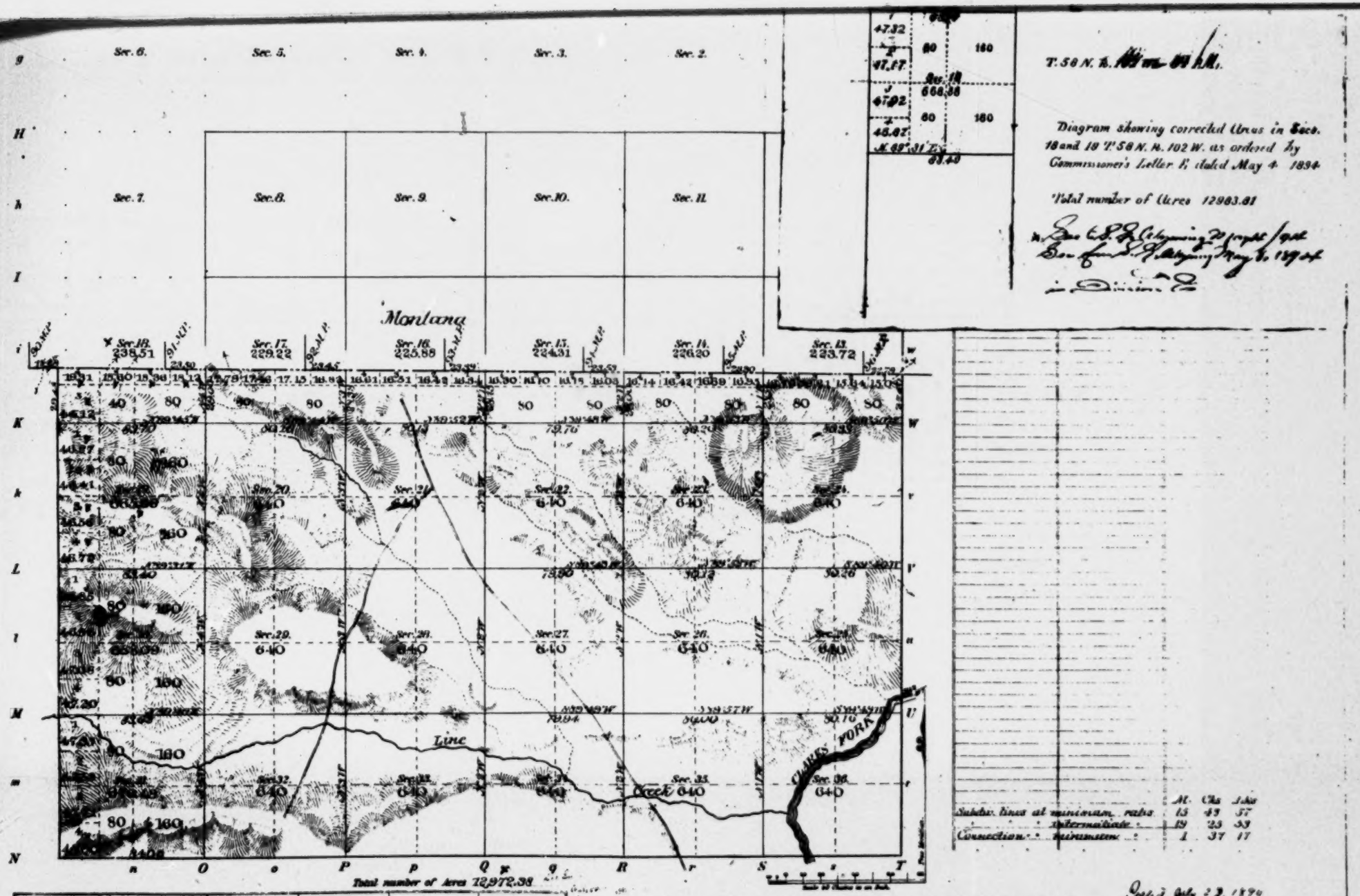
Plotted July 26. 94
J.F.K.

9/10/43 RRA

387-388

PLAINTIFF'S EXHIBIT 26





Surveys Designated	By Whom Surveyed	Date of Contract	Amount of Surveys M. Chs. Lks.	When Surveyed	Magnetic Declination
Township lines Subdivisions Connections	A.L. Coleman " "	March 8, 1892	34 74 19 1 37 17	July 26 30 1892	19° 31' East

The above Map of Township 58 North of Range 102 West of the 6th Principal Meridian Wyoming is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

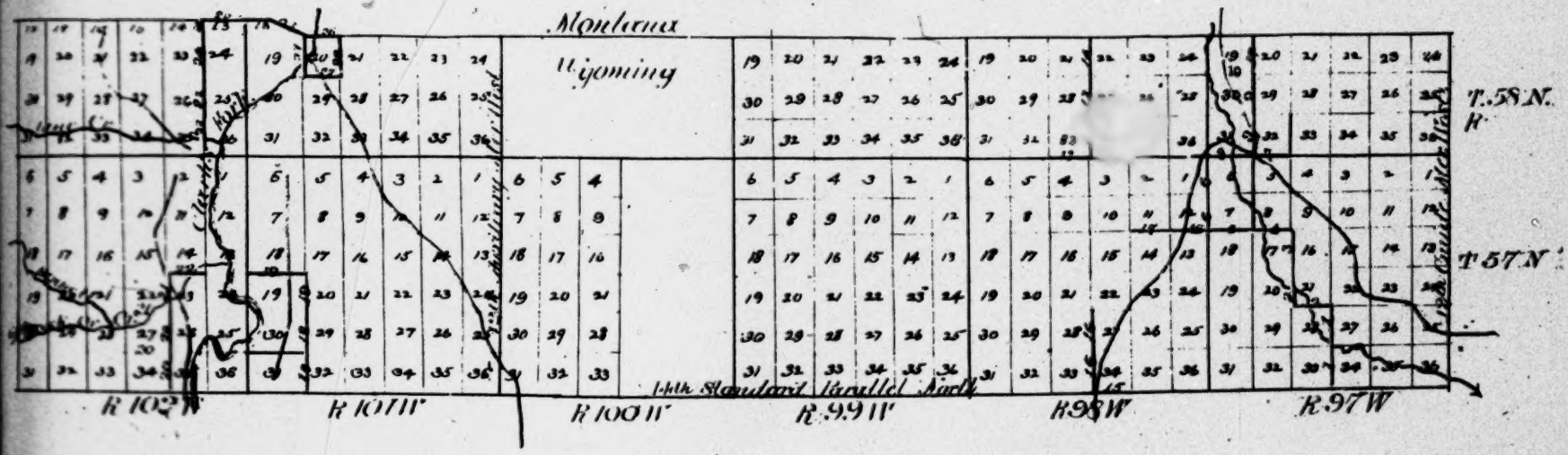
Surveyor General's Office
Cheyenne Wyo Nov. 26/1892

Wm A. Richards
Surv. Gen.

359-360

PLAINTIFF'S EXHIBIT 27

Examination of surveys under contract No 247. A. L. Coleman. U.S. Dep. Sur.
lines shown in red examined by H. S. Richards U.S. Sur. Gen.



361-362

[fols. 363-364] PLAINTIFF'S EXHIBIT 28

Department of the Interior, General Land Office,
Washington, D. C.

December 20, 1892.

The U. S. Surveyor General, Cheyenne, Wyoming.

SIR:

Your letter dated November 26, 1892, transmitting return of the surveys executed by Augustus L. Coleman, U. S. deputy surveyor, under his contract No. 247, dated March 8, 1892, accompanied by your report of the field examination of said surveys, has been received.

Said surveys are considered satisfactory, and are hereby accepted, but the triplicate plats will not be filed in the proper local land office until you receive further instructions relative to the same by another communication from this office.

Very respectfully, W. W. Rose, Assistant Commissioner.

[fols. 365-366] PLAINTIFF'S EXHIBIT 29

Report No. 56624

Department of the Interior,
General Land Office

January 5, 1893.

I hereby certify that I have examined and adjusted an account between the United States and Augustus L. Coleman, Deputy Surveyor, and find that the sum of Three thousand seven hundred and fifty-seven 17/100 dollars is due from the United States unto the said Augustus L. Coleman for surveying done by him in Wyoming under contract of March 8, 1892, No. 247 per his account therefor, as certified on the 26 of Nov. 1892 by Wm. A. Richards, Surveyor General of Wyoming which has been compared by this Office with the approved plat of the surveys thus executed and found correct; and which sum is payable unto the said Augustus L. Coleman by warrant to be drawn on

and charged to the appropriation of $400,000 act of March 3, 1891, For Surveying Public Lands 1892 as appears from the statement and voucher herewith transmitted for the decision of the First Comptroller of the Treasury thereon.

M. M. Rose, Asst. Commissioner.

To Hon. A. C. Matthews, First Comptroller of the Treasury.

$3757 17/100 payable to Augustus L. Coleman, Deputy Surveyor.

Draft to be sent to payee, in care of U. S. Surveyor General of Wyoming.

[fol. 367] PLAINTIFF'S EXHIBIT 30

Department of the Interior,
General Land Office,
Office of U. S. Surveyor General,
District of Wyoming

W. A. Richards, Surveyor General, Frank Bond, Chief Clerk.

Cheyenne, July 15, 1893.

The Commissioner of the General Land Office, Washington, D. C.

SIR:

By your letter E, dated October 15, 1892, I was notified that the surveys made under contract No. 243, executed by Shannon and Coleman were accepted, but was instructed to not file the triplicate plats until further notice. By your letter E, dated December 7, 1892, I was informed that such notice would probably be transmitted within a week.

By your letter E, dated Dec. 20, 1892, I was notified of the acceptance of the surveys made by Augustus L. Coleman under contract No. 247, and I was instructed to not file the triplicate plats until further notice should have been received.

The triplicate plats of the surveys made under both the contracts above named still remain in this office.

I am in receipt of numerous inquiries as to the cause of the delay in opening to filing the lands embraced in those surveys, from settlers, who are anxious to file upon the land, [fol. 368] which they occupy. Both tracts of land lie remote from the land offices of the districts in which they are situated, and it is very important that the settlers be allowed to file *f*efore the arrival of cold weather.

Very respectfully, Wm. A. Richards, U. S. Surveyor General.

[fols. 369-370] [Endorsed:] Office of U. S. Surveyor General, Cheyenne, Wyo. July 15, 1893. Asks if triplicate plats under Conts. 243 & 247 may not be filed. Wm. A. Richards, U. S. Surveyor General. J. B. S. Noted in 198.] File see W. S. G. May 9, 1894. (Vol. 102, p. 251.) (See Vol. 89, p. 324.)
Vol. 89, p. 324.)

[fols. 371-372] PLAINTIFF'S EXHIBIT 31

Department of the Interior, General Land Office,
Washington, D. C.

May 4, 1894.

The U. S. Surv.yor General, Cheyenne, Wyoming.

SIR:

Relative to the returns of the surveys executed by U. S. Deputy Surveyor A. L. Coleman, under his contract No. 247, dated March 8, 1892, which were transmitted to this office with your letter, dated November 26, 1892, and which were accepted by this office by letter "E", dated December 20, 1892, you are hereby authorized to file the triplicate plats thereof, in the proper local land office, after correcting the areas of lots 4 and 5, section 18, and lots 1, 2, 3, and 4, section 19, township 58 north, range 102 west, together with the total areas of said sections, all of which are found to be in error.

A tabulated statement of the corrected areas will be transmitted to this office as soon as practicable, for proper notation on the duplicate plat of said township.

Very respectfully, Edw. A. Bowers, Acting Commissioner.

[fol. 373] PLAINTIFF'S EXHIBIT 32-A

Department of the Interior, General Land Office,

Washington, D. C.

May 5, 1894.

The U. S. Surveyor General, Cheyenne, Wyoming.

SIR:

Referring to office letter "E" dated October 15, 1892, notifying you of the acceptance, subject to amendment, of the surveys executed by Shannon and Coleman, U. S. Deputy Surveyors, under their contract No. 243, you are now authorized to file in the local land office, the triplicate plats of said surveys, *except* those of townships Nos. 25, 26, 27, and 28 north, range 112 west.

You will receive instructions in regard to the plats of the excepted townships in a few days.

Very respectfully, Edw. A. Bowers, Acting Commissioner.

[fol. 374] PLAINTIFF'S EXHIBIT 32-B

Department of the Interior, General Land Office

Washington, D. C.

May 9, 1894.

The U. S. Surveyor General, Cheyenne, Wyoming.

SIR:

Referring to office letter "E" dated October 15, 1892, accepting, subject to amendments, surveys under contracts No. 243, executed by Shannon and Coleman, U. S. Deputy Surveyors, your attention is invited to Manual requirements, pages 40, 42 and 43 (i. e.), "Prescribed Limits," etc., "Retracing Township Lines," etc., and last paragraph, page 42, beginning with "Near the end of the field notes", &c.

In the absence of all references to irregularities along the 14th Guide Meridian, extending from the 6th to the 7th Standard Parallel North, the plats of Tps. 25, 26, 27, and 28 N., R. 112 W. indicate that said guide meridian is not only very crooked, but greatly in excess of 24 miles in length. The failure of the deputies to retrace said guide meridian; the insertion of tables in the field notes of township exte-

riors, in error in latitude and departure, from 5.71 to 20.16 chains, regardless of the Manual requirements herein referred to; the *assumed* position of ¼ section corner on the west boundary of section 31, Tp. 26 N., R. 112 W., and [fol. 375] erroneous lottings and areas therein; and the approval of these enumerated and many other errors, by your predecessor in office, fully accounts for the long detention of the triplicate plats in your office.

Your attention is also invited to numerous discrepancies between field notes and plats of subdivisional surveys in all four townships, particularly on the plat of Tp. 26 N., R. 112 W., on which, a homestead claim, improperly crossing meandered lines, is bounded by full (and shaded) lines, and therefore represented *surveyed* lines, conforming to lines of legal subdivision; similar representation is made of a desert land claim; thereby presenting a recognition of the existence of lines of legal subdivision on the ground, before the survey of the township had been accepted by the Commissioner of the General Land Office.

Page 24 of field notes, reads in part, as follows:

" 5.60 chs. Division fence bet. W. J. Delaney's and Albert Steed's land, bears N. 74° E.
20.00 chs. Leave W. J. Delaney's and enter Albert Steed's land."

The above entries, both referring to the same so-called boundary, are improper and inconsistent; the *land* belongs to neither person until lawfully acquired.

The general description states that a settler, understood to refer to Albert Steed, is located in section 21; triangulation gives position of Albert Steed's house in section 28; no house shown on the plat, in either section 21 or 28.

[fol. 376] If *corners* of a desert land claim exist on the ground, they should be noted as other topographical features, the boundary connecting the established corners should be shown by a broken line or if a fence marks the line, it should be represented; but in no case will such boundaries be *assumed* by either deputy or draughtsman, *coincident with lines of legal subdivisions.*

You will please submit an estimate for the retracement of the 14th Guide Meridian West, through Tps. 25, 26, 27, and 28 N., between Rs. 112 and 113 W. In case your estimate is approved and you are authorized to contract for the retracement, the special instructions will provide for

recording in the field notes, the true bearing and distance between successive section and ¼ section corners, all of which will be entered on the *township plats;* while the true bearings and lengths of lines between successive *township corners* will be entered on the *diagram of exterior lines and on the township plats.*

The tabular statements in notes of township exteriors, will be amended to conform to the facts determined by the retracement; the plat of township 26 north, range 112 west will probably have to be made anew; and, on the remaining township plats, the numerous errors and omissions will be corrected or supplied, as the case may be.

The diagrams of exterior lines, the four plats, and the field notes of exteriors and subdivisions, are returned in [fols. 377-378] separate package.

The triplicate plats cannot be filed until the guide meridian shall have been retraced and corrections made as herein directed.

Please give this matter early attention and acknowledge receipt of this letter.

Very respectfully, Edw. A. Bowers, Acting Commissioner.

[fols.-379-380] PLAINTIFF'S EXHIBIT 33

Wyoming No. 1

Northern Pacific Railway Company

Office of Land Commissioner

St. Paul, Minn., May 27, 1914.

Hon. Charles L. Decker, U. S. Surveyor General, Cheyenne, Wyoming.

DEAR SIR:

Pursuant to the provisions of the Act of Congress approved February 27, 1899, entitled "An Act to authorize the Commissioner of the General Land Office to cause public lands to be surveyed in certain cases", I hereby apply on behalf of the Northern Pacific Railway Company, for the survey of the lands hereinafter described, the same being within the limits of the land grant of July 2, 1864, to the Northern Pacific Railroad Company, now owned by the

Northern Pacific Railway Company, and being of the character of lands the survey of which is authorized by the Act of Congress aforesaid, and I respectfully request that I be furnished with an estimate of the amount required to pay for such surveys, and for the examination thereof, pursuant to law and the rules and regulations of the Department of the Interior, upon receipt of which estimate, the required sum will be deposited to the credit of the United States, as required by said Act of Congress.

The description of the land sought to be surveyed is as follows, to-wit:

The unsurveyed portion of Township fifty-seven (57) North, of Range one hundred (100) West of the Sixth (6th) Principal Meridian, Wyoming, containing approximately eleven thousand three hundred and sixty (11,360) acres.

The unsurveyed portion of Township fifty-eight (58) North, of Range one hundred (100) West, of the Sixth (6th) Principal Meridian, Wyoming, containing approximately eleven thousand five hundred and twenty (11,520) acres.

Yours truly, Thomas Cooper, Land Commissioner.

[fols. 381-382] PLAINTIFF'S EXHIBIT 34 C

Northern Pacific Railway Company,

Land Department

Grafton Mason, Land Attorney, St. Paul, Minn.

G. H. Plummer, Western Land Agent, Tacoma, Wash.

D. E. Willard, Development Agent, St. Paul, Minn.

Notice.—All prices quoted subject to change and lands subject to sale without further notice.

St. Paul, Minn., June 15, 1914.

L. C. No. 4062

Hon. Charles L. Decker, U. S. Surveyor General, Cheyenne, Wyoming.

DEAR SIR:

Your favors of May 5th and 25th were duly received and I note that you have received application for the survey of fractional Townships 57 and 58 N., R. 103 W.; that you have

not received applications for survey of Townships 57 and 58 N., R. 100 W., and that there are no funds available for these two latter named townships.

I have decided that we would like to have Twps. 57 and 58 N., R. 100 W. surveyed and accordingly enclose herewith application for estimated cost of surveying same under the Act of Congress approved February 27, 1899 (30 Stat., 892), and shall be pleased to hear from you in due course.

Yours truly, Thomas Cooper, Land Commissioner.

WW-O.
Enclo.

[fols. 383-384] PLAINTIFF'S EXHIBIT 35

Div. "E" Re to Dep. for Survey by NPRy. Co.

Department of the Interior

Office of U. S. Surveyor General

Cheyenne, Wyoming, June 17, 1914.

The Commissioner of the General Land Office, Washington, D. C.

SIR:

I am enclosing herewith the application of the Northern Pacific Railway Co., for the survey of Tps. 57 & 58 N., R. 100 W., and the request that an estimate of the amount required to pay for such surveys be furnished them, in accordance with the provision of the Act of Congress approved Feb. 27, 1899, and the rules and regulations of the Dept. of the Interior.

The survey of these townships, could be included in Group 25, Wyoming, and the surveys made during this season, as the surveyor assigned to Group 25 will not have enough work to keep him busy thru the surveying season.

I, therefore, have the honor to recommend that I be authorized to furnish the N. P. Ry. Co. with an estimate of the cost of field and office work of such surveys; and that upon the deposit of the amount estimated to cover said survey, I be authorized to issue special instructions for same.

Very respectfully, Charles L. Decker, U. S. Surveyor General.

EGP.

[fols. 385-386] PLAINTIFF'S EXHIBIT 36

Please Refer to 434481 "E" TCH

Department of the Interior

General Land Office

Washington

June 30, 1914.

Address only the Commissioner of the General Land Office

Application of the Northern Pacific Railroad Company for Survey of Ts. 57 and 58 N., R. 100 W.: Wyoming

U. S. Surveyor General, Cheyenne, Wyoming.

SIR:

I am in receipt of your letter dated June 17, 1914, inclosing an application of the Northern Pacific Railway Company for the survey of Ts. 57 and 58 N., R. 100 W., within the indemnity limits of its grant in Wyoming, in accordance with the provisions of the act of February 27, 1899.

In reply you are hereby authorized and directed to furnish said company with an estimate as to the cost of the field and office work involved in the completion of the survey of these two townships, and upon receipt of evidence of the deposit of the amount therein named, you are authorized to issue special instructions for the work.

Very respectfully, C. M. Bruce, Assistant Commissioner.

6-27-MNF.

[fol. 387] PLAINTIFF'S EXHIBIT 37-A

DEPARTMENT OF THE INTERIOR

Office of U. S. Surveyor General

Cheyenne, Wyoming, July 20, 1914.

434481, "E," Tch, Suppl. Spec. Instructions, Group 25 Wyo.

The Commissioner of the General Land Office, Washington, D. C.

SIR:

In compliance with instructions in your letter dated June 30, 1914, I have prepared, and transmit herewith through the office of the Supervisor of Surveys, supplemental special instructions, dated July 14, 1914, issued to Arthur D. Davis, assigned to Group 25 Wyoming, for the survey of fractional Ts. 57 and 58 N., R. 100 W., applied for by the Northern Pacific Railway Company.

These instructions are submitted for your approval, if found satisfactory.

Very respectfully Charles L. Decker, U. S. Surveyor General, by H. J. Goodale, Ch. Clk.

EGS.

[fol. 388] PLAINTIFF'S EXHIBIT 37-B

Office of U. S. Surveyor General

Cheyenne, Wyoming, July 14, 1914.

Supplemental Special Instructions, Group 25, Wyoming

Mr. Arthur D. Davis, U. S. Surveyor, Cheyenne, Wyoming.

SIR:

In addition to the special instructions issued you May 22, 1914, and supplemental special instructions issued June 1 and 22, 1914, for surveys required under Group 25 Wyoming, the following supplemental special instructions are prepared in accordance with Commissioner's letter "E" dated June 30, 1914, providing for the survey of the re-

maining unsurveyed portion of T. 57 N., R. 100 W., and fractional T. 58 N., R. 100 W.

These surveys should be made in strict conformity with the Manual of Surveying Instructions, and the following special instructions are issued for your guidance in the execution of surveys under this assignment.

Payable from Deposits by Individuals, Northern Pacific Railway Company, Act of February 27, 1899.

[fol. 389] Method of Survey

T. 57 N., R. 100 W.

Exteriors: The 14th Standard Parallel North on the south boundary of this township, was resurveyed by Brunt & Bandy in 1905, so it is presumed that these corners will be found in their proper positions.

The subdivision lines from the east close on the east boundary, and it must therefore be preserved, missing corners being reestablished at proportionate distances. Should the boundary be found defective in both alinement and measurement, employ the usual sectional guide meridian, setting closing corners on the east range line for the sections of this township and changing those on the old line to corners for the sections to the east. If the line is defective in measurement only, corners should be set thereon for the sections of this township at regular intervals from the southeast corner of the township.

No subdivision lines or protracted areas close on the east two and one-half miles of the north boundary, and if found defective this portion of the boundary should be obliterated and executed as an independent resurvey, and corners set at regular intervals, in harmony with the plan of subdivision of T. 58 N., R. 100 W.

Subdivisions: Subdivide in the usual manner, closing your lines on accepted surveys by random and true lines, or by true lines terminated by proper section closing corners, if the old surveys are defective beyond proper limit of closure. The northwest quarter of section 3 is shown as surveyed, being a protracted area. You will therefore preserve said area.

[fol. 390] T. 58 N., R. 100 W.

Exteriors: The condition of the boundaries of this township will influence the method of subdivision, and should

first be determined. The same procedure relative to the east boundary of this township should be followed as is outlined for T. 57 N., R. 100 W., employing a sectional guide meridian if necessary. As surveyed areas close on the west three and one-half miles of the south boundary, this much of said boundary must be preserved, but the remaining two and one-half miles, if found defective, should be resurveyed, as previously indicated, by connecting the quarter corner between sections 3 and 34 to the corner of Ts. 57 and 58 N., Rs. 99 and 100 W. with a right line if within 21′ of cardinal, otherwise by running due east to an intersection with the range line, where the corner of Ts. 57 and 58 N., R. 100 W. will be established. Any fractional measurements will be so placed as to locate corners in harmony with the plan of subdivision of this township, which can be determined only after reaching the field.

Subdivisions: A defective south boundary, west three and one-half miles, may require the use of a sectional correction line for the western portion of the first latitudinal section line, and a defective east boundary the use of a sectional guide meridian, although a regular west boundary will permit of the subdivision from west to east, closing on the defective east boundary, without the use of a sectional guide meridian. The meridional section lines should be run to closing on the Montana-Wyoming state boundary, and a tie given to the nearest mile post.

[fol. 391] The foregoing instructions are deemed sufficient in view of your experience in executing surveys of this character.

The necessary blue prints showing courses, distances and old corner markings, and diagrams of surveys to be executed by you, are transmitted herewith.

Very respectfully, Charles L. Decker, U. S. Surveyor General.

EGS.

Approved: July 21, 1914. Frank M. Johnson, Supervisor of Surveys.

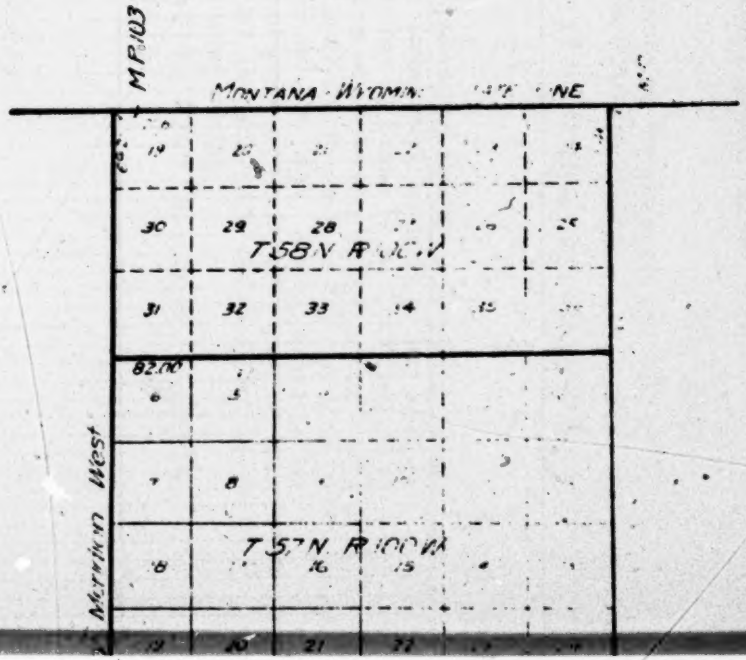
Department of the Interior, General Land Office.

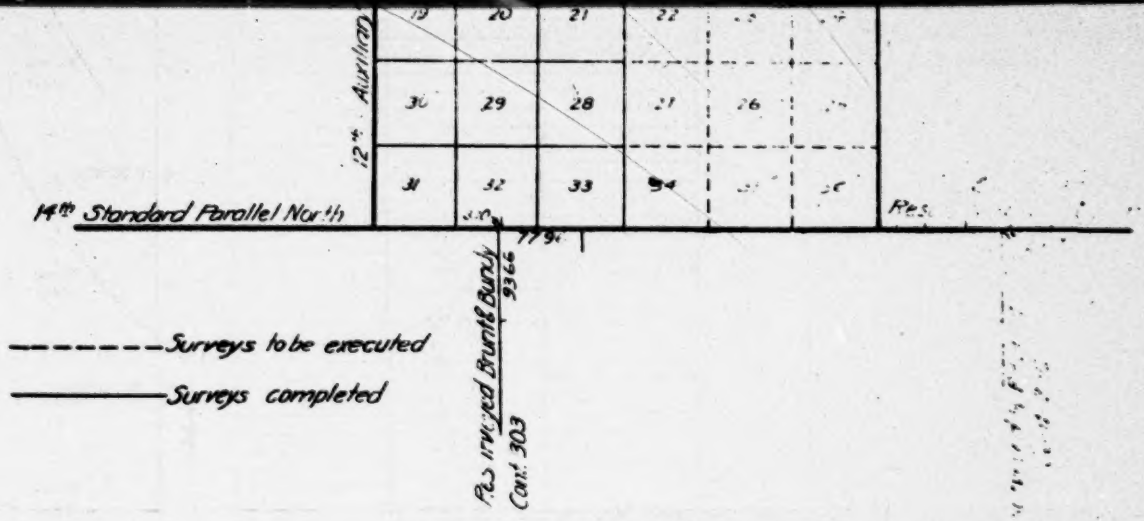
Approved: —— —, 1914.

—— ——, Commissioner.

(Here follows 1 photolithograph, side folios 392-393)

GROUP 25 WYOMING.





SURVEYOR GENERAL'S OFFICE

CHEYENNE, WYO

JULY

392-393

[fols. 394-395] PLAINTIFF'S EXHIBIT 38

Department of the Interior,
General Land Office,
Office of the Supervisor of Surveys,
Railroad Building, Denver, Colo.

July 21, 1914.

Div. "E" Transmitting Supplemental Special Instructions, Group No. 25, Wyoming. 1 Encl.

The Commissioner of the General Land Office, Washington, D. C.

SIR:

Referring to Supplemental Special Instructions, Group No. 25, Wyoming, transmitted herewith, I beg leave to advise that Mr. Arthur D. Davis, U. S. Transitman, who is now in the field on other surveys under Group No. 25, will complete that work and be ready to take up the work herein provided for on July 25th. I have therefore approved (Authority of letter A Feb. 24, 1913) these instructions and directed Mr. Davis through Assistant Supervisor Jaeckel to execute these surveys.

Very respectfully, Frank M. Johnson, Supervisor of Surveys.

RCM.

[fol. 396] PLAINTIFF'S EXHIBIT 39

434481 "E" TCH

Department of the Interior
General Land Office
Washington

July 29, 1914.

Supplemental special instructions for surveys, Group No. 25, Wyoming.

U. S. Surveyor General, Cheyenne, Wyoming.

SIR:

I am in receipt of a letter dated July 21, 1914, from Frank M. Johnson, Supervisor of Surveys, transmitting supplemental special instructions under Group No. 25 as prepared by your office providing for the survey of fractional Ts. 57 and 58 N., R. 100 W., Wyo., payable from the deposits by the Northern Pacific Railway Company under authority of the act of February 27, 1899.

It appears from Mr. Johnson's letter of transmittal that Arthur D. Davis, U. S. Surveyor, having completed the work heretofore assigned to him under Group No. 25, was ready on July 25, 1914 to take up the additional work provided for under these supplemental special instructions, and that he therefore, under authority of office letter "A" dated February 24, 1913, approved said supplemental spe-
[fols. 397-398] cial instructions in order to avoid the delay involved in forwarding the same to this office for examination.

The instructions have therefore been placed of record in this office, as a basis for the examination of the returns of the survey when the same are at hand.

Very respectfully, —— ——, Assistant Commissioner.

7-28—MNF.

[fol. 399] PLAINTIFF'S EXHIBIT 40

Department of the Interior,
Office of U. S. Surveyor General

Cheyenne, Wyoming, December 9, 1913.

Div. "E" 434481 Transmitting Returns Gp. 25 Wyo.

The Commissioner of the General Land Office, Washington, D. C.

SIR:

I have the honor to transmit herewith under separate covers, for your acceptance and photolithographic reproduction of the plats, returns of Group 25 Wyoming, as executed by Arthus D. Davis, U. S. Transitman.

One package containing nine books of transcripts of field notes, as follows, viz:

A. Frac. Subdivisions and resurveys of T. 30 N., R. 118 W.
B. Frac. Subdivisions and resurveys of T. 34 N., R. 118 W.
C. Exteriors, retracements and resurveys.
D. Fractional Subdivisions and resurveys of T. 57 N., R. 103 W.
E. Frac. Subdivisions and resurvey of T. 58 N., R. 103 W.
F. Frac. Subdivisions T. 53 N., R. 104 W.
G. Survey of Tract No. 107, T. 52 N., R. 103 W.
H. Frac. Subdivisions and resurveys of T. 58 N., R. 100 W.
I. Frac. Subdivisions of T. 57 N., R. 100 W.

One package containing eight plats as follows, viz:

T. 30 N., R. 118 W.,
T. 34 N., R. 118 W.,
T. 57 N., R. 103 W.,
[fols. 400-401] T. 58 N., R. 103 W.,
T. 53 N., R. 104 W.,
Supplemental—T. 52 N., R. 103 W.,
T. 58 N., R. 100 W.,
T. 57 N., R. 100 W.

Possible objections to these surveys were considered by your letters "E" of October 25, and November 18, 1915; also objection might be raised to the method adopted in reestablishing the northeast corner of section 8, T. 34 N., R. 118 W.

Mr. Davis states in this connection, that he finds no method of reestablishing a corner for one section, in the Circular of June 1, 1909.

Of the surveys included in these returns, Ts. 57 and 58 N., R. 100 W., were done under deposits made by the Northern Pacific Railway Company. (Surveying within railroad land grants, reimbursable, Act of February 27, 1899, 30 Stats. 892).

Very respectfully, Charles L. Decker, U. S. Surveyor General.

KGO

[fol. 402] PLAINTIFF'S EXHIBIT 41

Book "C"

Field Notes of the Survey of the South Boundary of T. 58 N., R. 103 W.; North Boundary of T. 53 N., R. 104 W.; Dependent Resurvey of the 14th Standard Parallel North, through Range 103 W.; East Boundaries of Ts. 57 and 58 N., R. 103 W. Resurvey of a part of the South and East Boundaries of T. 58 N., R. 100 W. Retracement of the 12th Auxiliary Meridian West, through T. 58 N.; East and South Boundaries of T. 58 N., R. 100 W.; East and South Boundaries of T. 57 N., R. 100 W., of the Sixth Principal Meridian, in the State of Wyoming.

Executed by Arthur D. Davis in the capacity of U. S. Transitman, under instructions dated June 1, 22, and July 14, 1914, issued by the United States Surveyor General to govern surveys included in Group No. 25, which were approved by the Commissioner of the General Land Office, June 16 and July 6, 1914, pursuant to authority contained in the Act of Congress dated June 25, 1910.

Survey commenced July 7, 1914.

Survey completed August 24, 1914.

[fol. 403] Retracement of the N. bdy. of T. 57 N., R. 100 W.

Chains.

Aug. 5, 1914: At 9 a. m., l. m. t., I set off 17° 7′ N. on the decl. arc; 44° 57′ N. on the lat. arc; and determine a meridian with the solar at the cor. of Ts. 57 and 58 N., Rs. 100 and 101 W., which is a sandstone,

Chains.

14x12x6 ins., above ground, mkd. and witnessed as described by the surveyor general.

Thence I run

East, on a random line bet. secs. 6 and 31.

40.33 Fall 11 lks. S. of original ¼ sec. cor., bet. secs. 6 and 31, which is a sandstone, 12x8x6 ins., above ground,

mkd. and witnessed as described by the surveyor general;

renew mound of stone.

This cor. will refer hereafter to sec. 6 only.

The bearing of this half mile is S. 89° 59' W.

From this cor., I run

East, on a random line bet. secs. 6 and 31.

40.24 Fall 8 lks. S. of original cor. of secs. 5, 6, 31 and 32, which is a sandstone, 14x8x6 ins. above ground, marked

and witnessed as described by the surveyor general;

raise a mound of stone, 2 ft. base, 1½ ft. high, S. of

cor.

This cor. will refer hereafter to secs. 5 and 6 only.

The bearing of this half mile is S. 89° 59' W.

From this cor., I run

East, on a random line, on the N. bdy. sec. 5.

39.61 Fall 12 lks. S. of original ¼ sec. cor. bet. secs. 5 and 32, which is a sandstone, 16x10x3 ins. above ground,

mkd. and witnessed as described by the surveyor general;

renew pits.

This ¼ cor. will refer to sec. 5 only.

The bearing of this half mile is S. 89° 59' W.

From this cor., I run

East, on a random line, on the N. bdy. sec. 5.

40.14 Fall 15 lks. N. of original cor. of secs. 4, 5, 32 and ground,

marked and witnessed as described by the surveyor general.

This cor. will refer hereafter to secs. 4 and 5 only.
The bearing of this half mile is N. 89° 47′ W.
From this cor., I run
East, on a random line, on the N. bdy. of sec. 4.
39.80 Fall 26 lks. S. of original ¼ sec. cor., bet. secs. 4 and 33, which is a sandstone, 14x10x4 ins. above ground,
mkd. and witnessed as described by the surveyor general.
This ¼ cor. will refer hereafter to sec. 4 only.
The bearing of this half mile is S. 89° 38′ W.
From this cor., I run
East, on a random line, on the N. bdy. sec. 4.
39.56 Fall 17 lks. S. of original cor. of secs. 3, 4, 33 and 34, which is a sandstone, 16x12x2 ins. above ground, marked
and witnessed as described by the surveyor general.
This cor. will refer hereafter to secs. 3 and 4 only.
The bearing of this half mile is S. 89° 45′ W.
From this cor., I run
East, on a random line, on the N. bdy. sec. 3.
38.52 Fall 39 lks. N. of original ¼ sec. cor., bet. secs. 3 and 34, which is a sandstone, 10x8x4 ins. above ground, mkd.
and witnessed as described by the surveyor general.
This cor. will refer hereafter to sec. 3 only.
The bearing of this half mile is N. 89° 25′ W.
Aug. 5, 1914: At this cor., I lay off 17° 4′ N. on the decl. arc; and at 12h 06m l.m.t., observe the sun on
the meridian the resulting lat. is 44° 57′ N.

[fol. 404]

From this cor., I run
East, on a random line bet. secs. 3 and 34, 2 and 35, 1 and 36, setting temp points at each 40.00 chs.
199.50 Intersect E. bdy. of Tp. 58 lks. S. of the cor. of Ts. 57 and 58 N., Rs. 99 and 100 W., previously described.
The bearing of this line is therefore S. 89° 50′ W.

Resurvey of the N. bdy. of T. 57 N., R. 100 W.

Chains.

From the cor. of Ts. 57 and 58 N., Rs. 99 and 100 W., I run
S. 89° 50′ W., bet. secs. 1 and 36.
Ascend gradually over badlands, through scattering sage.
11.00 Point of low spur, slopes NE.; descend gradually.
25.00 Draw, course NE.; ascend gradually over badlands.
38.00 Ridge, bears N. and S.; descend over rough badlands.
40.00 Set a sandstone, 18x12x4 ins., 12 ins. in the ground, for
¼ sec. cor., mkd. ¼ on N. face; raise a mound of stone,
2 ft. base, 1½ ft. high, N. of cor.
(This line was restored with stone cors. on account of
having no 3 in. iron posts.)
50.00 Rocky gulch, course NE.; ascend abruptly; enter scattering pinon timber, bears NE. and SW.
70.00 Ridge, bears N. and S.; descend abruptly.
76.50 Leave scattering pinon timber, bears NW. and SE.
80.00 Set a sandstone, 15x12x6 ins., 10 ins. in the ground, for
cor. of secs. 1, 2, 35 and 36, marked with 1 groove on
E. and 5 grooves on W. faces; and raise a mound of
stone, 2 ft. base, 1½ ft. high, W. of cor.
Land, rolling badlands.
Soil, stony, adobe and clay; 4th rate.
Timber, pinon.
Undergrowth, sage.
Scant growth of buffalo and bunch grass.

S. 89° 50′ W., bet. secs. 2 and 35.
Descend gradually over badlands.
7.00 Head of draw, course N.; ascend abruptly.
15.00 Point of badland spur, slopes N.; descend abruptly.
27.90 Badland draw, course N. 10° E.; ascend abruptly.

Chains.

33.00 Point of badland spur, slopes N. 20° E.; descend abruptly.

34.00 Head of draw, course N. 20° E.; ascend abruptly.

[fol. 405]

39.70 Divide, bet. East and West Fork of Silvertip Gulch, bears N. 20° W. and S. 20° E.; descend over broken badlands.

40.00 Set a sandstone, 18x14x5 ins., 12 ins. in the ground, for ¼ sec. cor., marked ¼ on N. face; raise a mound of stone, 3 ft. base, 1½ ft. high, N. of cor.

45.00 Head of draw, course N. 75° W.; over broken N. slope of spur.

80.00 Set a sandstone, 24x16x4 ins., 18 ins. in the ground, for cor. of secs. 2, 3, 34 and 35, marked with 2 grooves on E. and 4 grooves on W. face; raise a mound of stone 2 ft. base, 1½ ft. high, W. of cor.

Land, rough mountainous badlands.
Soil, rocky, clay and adobe; 4th rate.
Scant growth of buffalo and bunch grass.

S. 89° 50′ W., bet. secs. 3 and 34.
Over broken N. slope of spur.

9.00 Draw, course N.; ascend gradually.

14.00 Point of spur, slopes N.; descend gradually.

39.50 The original ¼ sec. cor., bet. secs. 3 and 34, previously described. This cor. now refers to sec. 3 only.

Land, rolling badlands.
Soil, stony badlands; 4th rate.
Scant growth of buffalo and bunch grass.

Aug. 5, 1914

[fol. 405a]

Boundaries of T. 58 N., R. 100 W.
Latitudes, Departures and Closing Errors

Line Designated	True Bearing	Distance Chs.	Latitudes N. Chs.	Latitudes S. Chs.	Departures E. Chs.	Departures W. Chs.
East Bdy. T. 58N., R. 100W.	N. 0°07'W.	39.76	39.76			.08
	N. 0°19'W.	40.22	40.22			.22
	N. 0°03'W.	40.00	40.00			.03
	N. 0°20'W.	38.73	38.73			.23
	N. 0°12'W.	39.99	39.99			.14
	N. 0°07'E.	30.95	30.95		.06	
Mont.-Wyo. bdy. line.	S. 89°52'W.	142.12		.33		142.12
	S. 89°38'W.	79.50		.51		79.50
	S. 89°58'W.	79.07		.05		79.07
	S. 89°06'W.	78.96		1.24		78.96
	N. 89°21'W.	78.47	.89			78.47
	S. 89°07'W.	19.65		.30		19.65
West Bdy. T. 58N., R. 100W.	S. 0°14'E.	29.02		29.02	.12	
	S. 0°21'E.	40.26		40.26	.25	
	South	39.43		39.43		
	S. 0°21'E.	80.00		80.00	.49	
	S. 0°09'E.	40.40		40.40	.11	
South Bdy. T. 58N., R. 100W.	N. 89°51'E.	40.33	.11		40.33	
	N. 89°53'E.	40.24	.08		40.24	
	N. 89°50'E.	39.61	.12		39.61	
	S. 89°47'E.	40.14		.15	40.14	
	N. 89°38'E.	39.80	.26		39.80	
	N. 89°45'E.	39.56	.17		39.56	
	S. 89°25'E.	38.52		.39	38.52	
	N. 89°50'E.	199.50	.58		199.50	
Convergency						.36
Totals		231.86	232.08	478.73		478.83
			231.86			478.73
Error in lat.			.22			
Error in dep.						.10

[fols. 406-407] **Final Oath of United States Surveyor**

I, Arthur D. Davis, U. S. Transitman, do solemnly swear that, in pursuance of special instructions received from the U. S. Surveyor General for Wyoming, bearing date of the First and 22nd day of June, 1914 — 14th July, 1914, I have well, faithfully, and truly, in my own proper person, and in strict conformity with said instructions, the Manual of Surveying Instructions, and the laws of the United States, surveyed all those parts or portions of Exteriors and Subdivision of Ts. 57 and 58 N., in Rs. 100 and 103 W.; T. 53 N., R. 104 W.; Metes and bounds in Ts. 51 and 52 N., R. 103 W. of the Sixth Principal Meridian, in the State of Wyoming,

which are represented in the foregoing field notes as having been executed by me, and under my direction; and I do further solemnly swear that all the corners of said survey have been established and perpetuated in strict accordance with the Manual of Surveying Instructions, and the special written instructions of the U. S. Surveyor General for Wyoming and in the specific manner described in the field notes, and that the foregoing are the original field notes of such survey.

Arthur D. Davis, U. S. Transitman.

Subscribed by said Arthur D. Davis, and sworn to before me this 8th day of Feb., 1915. Charles L. Decker, U. S. Surveyor General for Wyoming.

Approval

Office of the United States Surveyor General,

Cheyenne, Wyoming

December 9, 1915.

The foregoing field notes of the survey of the S. Bdy. of T. 58 N., R. 103 W.; N. Bdy. of T. 53 N., R. 104 W.; Dependent Resurvey of the 14th St. Par. N., through R. 103 W.; E. bdies. of Ts. 57 and 58 N., R. 103 W., Resurvey of a part of the S. and E. bdies. of T. 58 N., R. 100 W.; Retracement of the 12th Auxiliary Meridian W., through T. 58 N.; E. and S. Bdies. of T. 58 N., R. 100 W.; E. and S. Bdies. of T. 57 N., R. 100 W., of the 6th P. M., in the State of Wyoming, executed by Arthur D. Davis, U. S. Transitman under his special instructions dated June 1, 22 and July 14, 1914, having been critically examined, and the necessary corrections and explanations made, the said field notes, and the surveys they describe, are hereby approved.

Charles L. Decker, U. S. Surveyor General.

I certify that the foregoing transcript of the field notes of the above-described surveys in the State of Wyoming, has been correctly copied from the original notes on file in this office.

Charles L. Decker, U. S. Surveyor General.

[fol. 408] PLAINTIFF'S EXHIBIT 42

Book "C"

Field Notes of the Survey of the South Boundary of T. 58 N., R. 103 W.; North Boundary of T. 53 N., R. 104 W.; Dependent Resurvey of the 14th Standard Parallel North, Through Range 103 W.; East Boundaries of Ts. 57 and 58 N., R. 103 W.; Resurvey of a Part of the South and East Boundaries of T. 58 N., R. 100 W.; Retracement of the 12th Auxiliary Meridian West, Through T. 58 N.; East and South Boundaries of T. 58 N., R. 100 W.; East and South Boundaries of T. 57 N., R. 100 W. of the Sixth Principal Meridian. In the State of Wyoming.

Executed by Arthur D. Davis

In the capacity of U. S. Transitman, under instructions dated June 1, 22 and July 14, 1914, issued by the United States Surveyor General to govern surveys included in Group No. 25, which were approved by the Commissioner of the General Land Office, June 16 and July 6, 1914, pursuant to authority contained in the Act of Congress dated June 25, 1910.

Survey commenced July 7, 1914.
Survey completed August 24, 1914.

[fol. 409] Retracement of the E. bdy of T. 58 N., R. 100 W.

Chains.

July 31, 1914: At 9 a. m., l. m. t., I lay off 44° 57′ N. on the lat. arc; 18° 24′ N. on the decl. arc; and determine a meridian with the solar at the original cor. of Ts. 57 and 58 N., Rs. 99 and 100 W., which is a sandstone, 14x3x6 ins., above ground, mkd. and witnessed as described by the surveyor general.

Thence I run

North, on a random line, bet. secs. 31 and 36.

39.76 Fall 8 lks. E. of original ¼ sec. cor. of secs. 31 and 36,

Chains.

which is a sandstone, 18x3x16 ins. above ground, mkd.
¼ on W. face, no accessories.
I establish accessories as follows:
A pinon, 12 ins. dia., bears S. 31° 15′ E., 83 lks. dist., mkd. ¼ S 31 B T.
Raise a mound of stone, 2 ft. base, 1½ ft. high, W. of cor.

The bearing of this half mile is N. 0° 7′ W.
From this cor., I run
North, on a random line, bet. secs. 31 and 36.
40.22 Fall 22 lks. E. of original cor. of secs. 25, 30, 31 and
36, which is a sandstone, 20x4x 4 ins. above ground,
marked as described by the surveyor general; no access-
ories.
I establish accessories as follows:
A pinon, 14 ins. dia., bears N. 84° E., 120 lks. dist., mkd. T 58 N R 99 W S 30 B T.
A pinon, 6 ins. dia., bears S. 76° E., 118 lks. dist., mkd. T 58 N R 99 W S 31 B T.
Raise a mound of stone, 2 ft. base, 1½ ft. high. W. of cor.
This half mile bears N. 0° 19′ W.

Chains.

North, on a random line, bet. secs. 25 and 30
40.00 Fall 3 lks. E. of original ¼ sec. cor., of secs. 25 and 30,
which is a sandstone, 12x10x6 ins., above ground, mark-
ed and witnessed as described by the surveyor general;
renew pits.
This half mile bears N. 0° 3′ W.
From this cor., I run
North, bet. secs. 25 and 30.
38.73 Fall 23 lks. E. of original cor. of secs. 19, 24, 25 and 30, which is a sandstone, 14x8x4 ins., above ground,

Chains.

mkd. and witnessed as described by the surveyor general.
This cor. will refer hereafter to secs. 19 and 30 only.
This half mile bears N. 0° 20′ W.

July 31, 1914

Aug. 1, 1914: At 7h 30m a.m., l.m.t., I set off 44° 59′
N. on the lat. arc; 18° 10′ N. on the decl. arc; and de-
termine a meridian with the solar at the cor. of secs.
19 and 30, on the E. bdy. of the Tp.
Thence I run
North, on a random line along W. bdy. of sec. 19.
39.99 Fall 14 lks. E. of original ¼ sec. cor., bet. secs. 19 and 24, which is a sandstone, 14x8x3 ins., above ground
marked and witnessed as described by the surveyor
general; renew pits.
This cor. will refer hereafter to sec. 19 only.
The bearing of this half mile is N. 0° 12′ W.
From this cor., I run
North, on a random line bet. secs. 19 and 24.
30.95 Fall 6 lks. W. of original closing cor. on the boundary
line bet. Montana and Wyoming, which is a sandstone,
16x14x2 ins. above ground, marked and witnessed as de-
scribed by the surveyor general.
This half mile bears N. 0° 7′ E.

Aug. 1, 1914

[fol. 410] Resurvey of a portion of the E. bdy. of T. 58 N., R. 100 W.

Chains.

From original ¼ sec. cor. on E. bdy. sec. 25, previously described, I run
N. 0° 20′ W., along E. bdy. of sec. 25.
Over rolling land.
15.50 Spur, projects NW.; descend gradually.
26.00 Draw, course NW.; ascend gradually over Elk basin.
38.73 The cor. of secs. 19 and 30, originally cor. of secs. 19, 24, 25 and 30, previously described.
Thence I run
N. 0° 12′ W., continuing measurement from the ¼ sec. cor. on E. bdy. sec. 25.
40.00 Set a sandstone, 20x14x4 ins., 15 ins. in the ground, for cor. of secs. 24 and 25, marked with 2 grooves on S. and 4 grooves on N. face; dig pits, 24x24x12 ins., in each sec. 6 ft. dist.; and raise a mound of earth, 4 ft. base, 2 ft. high, W. of cor.
Land, rolling.
Soil, light, loose, sandy adobe; 3rd rate.
Undergrowth, scattering sage.

N. 0° 12′ W., along E. bdy. of sec. 24.
Over rolling land in Elk basin.
38.72 The ¼ sec. cor. on W. bdy. sec. 19, originally the ¼ sec. cor. to secs. 19 and 24, previously described.
Thence I run
N. 0° 7′ E., along E. bdy. of sec. 24, continuing measurement from cor. of secs. 24 and 25.
40.00 Set a sandstone 18x8x4 ins., 12 ins. in the ground, for ¼ sec. cor., of sec. 24 only, marked ¼ on W. face; dig

Chains.

pits 18x18x12 ins., N. and S. of stone, 3 ft. dist.; and raise a mound of earth, 3½ ft. base, 1½ ft. high,
W. of cor.

55.70 Leave Elk Basin, foot of ascent, bears NW. and SE.;
ascend abruptly over rough rocky land.

69.67 The original closing cor. on the Montana-Wyoming boundary
line, previously described.

Land, rolling and rolling mountainous.
Soil, light, loose, sandy loam; 2nd rate.
Undergrowth, scattering sage.
Fair growth of bunch grass.

July 31, 1914.

[fols. 411-412] Final Oath of United States Surveyor

I, Arthur D. Davis, U. S. Transitman, do solemnly swear that, in pursuance of special instructions received from the U. S. Surveyor General for Wyoming, bearing date of the First and 22nd day of June and 14th July, 1914, I have well, faithfully, and truly, in my own proper person, and in strict conformity with said instructions, the Manual of Surveying Instructions, and the laws of the United States, surveyed all those parts or portions of Exteriors and Subdivision of Ts. 57 and 58 N., in Rs. 100 and 103 W.; T. 53 N., R. 104 W.; Metes and bounds in Ts. 51 and 52 N., R. 103 W., of the Sixth Principal Meridian, in the State of Wyoming, which are represented in the foregoing field notes as having been executed by me, and under my direction; and I do further solemnly swear that all the corners of said survey have been established and perpetuated in strict accordance with the Manual of Surveying Instructions, and the special written instructions of the U. S. Surveyor General for Wyoming and in the specific manner described in the field notes, and that the foregoing are the original field notes of such survey.

Arthur D. Davis, U. S. Transitman.

Subscribed by said Arthur D. Davis, and sworn to before me this 8th day of Feb., 1915. Charles L. Decker, U. S. Surveyor General for Wyoming. (Seal.)

APPROVAL

Office of the United States Surveyor General

Cheyenne, Wyoming, December 9, 1915.

The foregoing field notes of the survey of the S. Bdy. of T. 58 N., R. 103 W.; N. Bdy. of T. 53 N., R. 104 W.; Dependent Resurvey of the 14th St. Par. N., through R. 103 W.; E. bdies. of Ts. 57 and 58 N., R. 103 W., Resurvey of a part of the S. and E. bdes. of T. 58 N., R. 100 W.; Retracement of the 12th Auxiliary Meridian W., through T. 58 N.; E. and S. Bdies. of T. 58 N., R. 100 W.; E. and S. Bdies. of T. 57 N., R. 100 W., of the 6th P. M., in the State of Wyoming, executed by Arthur D. Davis, U. S. Transitman under his special instructions dated June 1, 22 and July 14, 1914, having been critically examined, and the necessary corrections and explanations made, the said field notes, and the surveys they describe, are hereby approved.

Charles L. Decker, U. S. Surveyor General.

I certify that the foregoing transcript of the field notes of the above-described surveys in the State of Wyoming, has been correctly copied from the original notes on file in this office.

Charles L. Decker, U. S. Surveyor General.

[fol. 413] PLAINTIFF'S EXHIBIT 43

Book "C"

Field Notes of the survey of the South Boundary of T. 58 N., R. 103 W.; North Boundary of T. 53 N., R. 104 W.; Dependent Resurvey of the 14th Standard Parallel North, through range 103 W.; East Boundaries of TS. 57 and 58 N., R. 103 W.; Resurvey of a part of the South and East Boundaries of T. 58 N., R. 100 W.; Retracement of the 12th Auxiliary Meridian West, through T. 58 N.; East and South Boundaries of T. 58 N., R. 100 W.; East and South Boundaries of T. 57 N., R. 100 W., of the Sixth Principal Meridian, in the State of Wyoming.

Executed by Arthur D. Davis in the capacity of U. S. Transitman, under instructions dated June 1, 22, and July

14, 1914, issued by the United States Surveyor General to govern surveys included in Group No. 25, which were approved by the Commissioner of the General Land Office, June 16 and July 6, 1914, pursuant to authority contained in the Act of Congress dated June 25, 1910.

Survey commenced July 7, 1914.

Survey completed August 24, 1914.

[fol. 414] Retracement of the

12th Guide Meridian West, through Tps. 58 N., bet. Rs. 100 and 101 W.

Chains.

From the cor. of Ts. 57 and 58 N., Rs. 100 and 101 W.,

I run

North, on a random line bet. secs. 31 and 36.

40.40 Fall 11 lks. E. of original ¼ sec. cor., bet. secs. 31 and 36, which is a sandstone, 14x13x2 ins. above ground,
mkd. and witnessed as described by the surveyor general.
Renew pits at this ¼ sec. cor.

This half mile bears N. 0° 9′ W.

From this cor., I run

North, on a random line bet. secs. 31 and 36.

39.76 Fall 24 lks. E. of original cor. of secs. 25, 30, 31 and 36, which is a sandstone, 14x10x4 ins. above ground,
marked and witnessed as described by the surveyor gen-
eral; renew pits and mound of earth.

This half mile bears N. 0° 9′ W.

From this cor., I run

North, on a random line bet. secs. 25 and 30.

40.24 Fall 25 lks. E. of original ¼ sec. cor., bet. secs. 25 and
30, which is a sandstone, 14x10x8 ins., above ground,
marked and witnessed as described by the surveyor gen-
eral; I renew pits and mound of earth.

Chains.

This half mile bears N. 0° 21′ W.
From this cor., I run
North, on a random line bet. secs. 25 and 30.
39.43 Intersect original cor. of secs. 19, 24, 25 and 30, which
is a sandstone, 16x12x4 ins., above ground, mkd. and
witnessed as described by the surveyor general.
This cor. will refer hereafter to secs. 24 and 25 only.
This half mile bears North.
From this cor., I run
North, on a random line, bet. secs. 19 and 24.
40.26 Fall 25 lks. E. of original ¼ sec. cor., bet. secs. 19 and 24, which is a sandstone, 12x12x2 ins., mkd. and
witnessed as described by the surveyor general. Renew
pits and mound.
The bearing of this half mile is N. 0° 21′ W.
From this cor., I run
North, on a random line bet. secs. 19 and 24.
29.02 Fall 12 lks. E. of old closing cor. on Montana-Wyoming
boundary line, which is a sandstone, 12x8x6 ins. above
ground, marked and witnessed as described by the sur-
veyor general.
This half mile bears N. 0° 14′ W.
Aug. 3, 1914: At this cor., I set off 17° 30′ N. on the decl. arc; and at 12h 06m p.m., l.m.t., observe the sun
on the meridian; the resulting lat. is 45° 00′ N.

[fol. 415] Certificate of Assistants

We, the undersigned, hereby certify upon honor that we assisted, to the best of our skill and ability, Arthur D. Davis, U. S. Transitman, during the periods and in the capacities stated opposite our several signatures, in surveying all those parts or portions of Exteriors and Sub-

division of T. 37 and 38 N. in Rs. 100 and 102 W.; T. 39 N., R. 104 W.; Metes and bounds in T. 32 N., R. 102 W.; and metes and bounds in T. 31 N., R. 102 W. of the Sixth Principal Meridian, in the State of Wyoming, which are represented in the foregoing field notes as having been executed by him, and under his direction; and that said survey has been, in all respects, to the best of our our knowledge and belief, well and faithfully executed.

Name	Period of Service: Began	Ended	Capacity
J. W. Green	July 1, 1916	Aug. 28, 1916	Final claimant
E. E. Dalbey	July 1, 1916	Aug. 5, 1916	Final claimant
Fred Reynolds	July 7, 1916	Aug. 26, 1916	Final claimant
Otto Hirsig	July 10, 1916	Aug. 3, 1916	Chainman and Flagman
Herbert Wike	Aug. 4, 1916	Aug. 26, 1916	Chainman
Ray Griffith	Aug. 4, 1916	Aug. 26, 1916	Flagman

Subscribed and certified to before me on the dates of the final service as shown above.

Arthur D. Davis, U. S. Transitman.

[fols. 416-417] Final Oath of United States Surveyor

I, Arthur D. Davis, U. S. Transitman, do solemnly swear that, in pursuance of special instructions received from the U. S. Surveyor General for Wyoming, bearing date of the First and 22nd day of June, and 14th July, 1916, I have well, faithfully, and truly, in my own proper person, and in strict conformity with said instructions, the Manual of Surveying Instructions, and the laws of the United States, surveyed all those parts or portions of Extension and Subdivision of Tn. 37 and 38 N., in Rs. 100 and 102 W.; T. 39 N., R. 104 W.; Metes and bounds in Tn. 34 and 32 N., R. 102 W., of the Sixth Principal Meridian, in the State of Wyoming, which are represented in the foregoing field notes as having been executed by me, and under my direction; and I do further solemnly swear that all the corners of said survey have been established and perpetuated in strict accordance with the Manual of Surveying Instructions, and the special written instructions of the U. S. Surveyor General for Wyoming and in the specific manner described in the field notes,

and that the foregoing are the original field notes of such survey.

Arthur D. Davis, U. S. Transitman.

Subscribed by said Arthur D. Davis, and sworn to before me this 8th day of Feb., 1915. Charles L. Decker, U. S. Surveyor General for Wyoming. (Seal.)

Approval

Office of the United States Surveyor General

Cheyenne, Wyoming, December 9, 1915.

The foregoing field notes of the survey of the S. Bdy. of T. 58 N., R. 103 W.; N. Bdy. of T. 53 N., R. 104 W.; Dependent Resurvey of the 14th St. Par. N., through R. 103 W.; E. bdies. of Ts. 57 and 58 N., R. 103 W., Resurvey of a part of the S. and E. bdies. of T. 58 N., R. 100 W.; Retracement of the 12th Auxiliary Meridian W., through T. 58 N.; E. and S. Bdies. of T. 58 N., R. 100 W.; E. and S. Bdies. of T. 57 N., R. 100 W., of the 6th P.M., in the State of Wyoming, executed by Arthur D. Davis, U. S. Transitman, under his special instructions dated June 1, 22 and July 14, 1914, having been critically examined, and the necessary corrections and explanations made, the said field notes, and the surveys they describe, are hereby approved.

Charles L. Decker, U. S. Surveyor General.

I certify that the foregoing transcript of the field notes of the above-described surveys in the State of Wyoming, has been correctly copied from the original notes on file in this office.

Charles L. Decker, U. S. Surveyor General.

[fol. 418] PLAINTIFF'S EXHIBIT 44

Book "H"

Field Notes of the Dependent Resurvey of the Montana-Wyoming Boundary Line from the 102nd to the 109th Mile Post and the Survey of the Subdivision Lines of Township No. 58 North, Range No. 100 West, of the Sixth Principal Meridian, in the State of Wyoming.

Executed by Arthur D. Davis in the capacity of U. S. Transitman, under instructions dated July 14, 1914, issued by the United States Surveyor General to govern surveys included in Group No. 25, which were approved by the Commissioner of the General Land Office, July 29, 1914, pursuant to authority contained in the Act of Congress dated June 25, 1910.

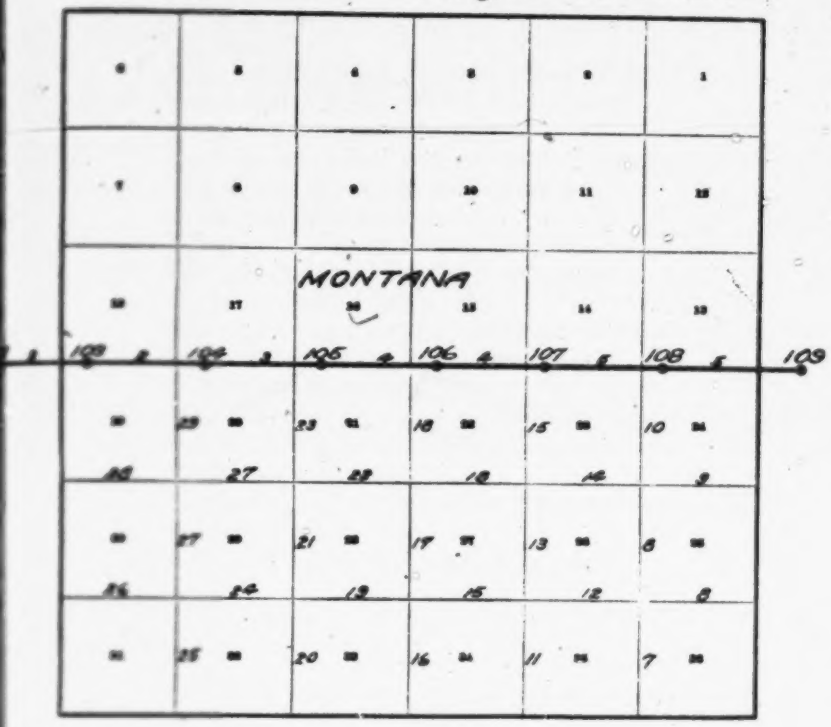
Survey commenced August 1, 1914.

Survey completed August 11, 1914.

(Here follows 1 Photolithograph, side folio 419)

INDEX DIAGRAM.

Township 58 North, Range 100 West.



Transcribed by PJP.

O. AMT.

T. PJF.

419

[fol. 419a] Preliminary Field Operations

Dependent Resurvey of the Montana-Wyoming Boundary Line

Chains.

See Test of instruments Book "D"
Aug. 1, 1914:
From the 102 mile post on the Montana-Wyoming Boundary,
I run
East, on a random line the 103rd mile.
80.39 Fall 124 lks. S. of the 103rd mile post.
From this mile post, I run
East, on a random line on the 104th mile.
78.47 Fall 89 lks. N. of the 104th mile post.
From this mile post, I run
East, on a random line on the 105th mile.
78.96 Fall 124 lks. S. of the 105th mile post.
From this mile post, I run
East, on a random line on the 106th mile.
79.07 Fall 5 lks. S. of the 106th mile post.
From this mile post, I run
East, on a random line on the 107th mile.
79.50 Fall 51 lks. S. of the 107th mile post.
From this mile post, I run
East, on a random line on the 108th and 109th miles.
80.00 Set temp. 108th mile post.
158.18 Fall 37 lks. S. of the 109th mile post.

[fol. 420]

Aug. 3, 1914; At 8 a.m., l.m.t., I lay off 45° 00′ N. on
the lat. arc; 17° 39′ N. on the decl. arc; and determine a meridian with the solar at the 102nd mile post,
on the Montana-Wyoming Boundary Line, which is a pine
post, set in a mound of stone, mkd. as described by the
surveyor general. This pine post was badly decayed,
therefore restore same as follows;

Chains.

Set a sandstone, 36x24x4 ins., 8 ins. in the ground, and
rocked in 18 ins., for the 102nd mile post, mkd. MONT
on N., WYO on S. and 102 M P on W. face; and raise a
mound of stone, 4 ft. base, 3 ft. high, W. of mile post.
Thence I run
N. 89° 07′ E., on the 103rd mile.
Ascend gradually over rolling S. slope of ridge.
62.90 Divide between Silvertip and Sand Coulee, bears NW. and
SE.; descend gradually over rolling land.
80.39 The 103rd mile post, which is a pine post, lying on the
ground, with MONT on N., WYO on S. faces; find evidence
of decayed wood at true point for mile post.
Set a sandstone, 24x12x8 ins., 18 ins. in the ground, for
the 103rd mile post, mkd. MONT on N., WYO on S. and
103 on W. face, dig pits, 36x36x12 ins., N. and S. of
stone, 4½ ft. dist.; and raise a mound of earth, 6 ft.
base, 3 ft. high, W. of mile post.
Land, rolling.
Soil, light, loose, sandy loam, on stony base; 2nd rate.
Fair growth of grass.

S. 89° 21′ E. on the 104th mile.
Descend gradually over gently rolling land.
22.50 Draw, course S.; ascend gradually.
62.00 Top of spur, bears N. and S.; descend abruptly.
72.50 Draw, course SE.; ascend abruptly.
78.00 Point of spur, slopes S.; descend abruptly.
78.47 The 104th mile post, which is a pine post, 8x8x72 ins.,

Chains.

marked as described by the surveyor general. In place of which
Set a sandstone, 36x16x8 ins., 24 ins. in the ground, for the 104th mile post, mkd. MONT on N., WYO on S., 104
M P on W. face; and raise a mound of stone, 4 ft. base, 3 ft. high, W. of mile post.
Land, rolling mountainous.
Soil, light, loose, sandy loam, on clay subsoil; 2nd rate.
Undergrowth, sage.
Fair growth of grass.

N. 89° 06′ E., on the 105th mile.
Descend abruptly over rolling mountainous land.
1.00 Draw, course S.; ascend gradually.
8.50 Point of high spur, slopes S.; descend abruptly.
47.60 Road, bears NE. and SW.
53.90 West fork of Silvertip Gulch, course NE.; ascend over rolling mountainous land.
77.00 Point of spur, slopes N.; descend over rough broken land.
78.96 The 105th mile post, which is a pine post, 8x8x72 ins., mkd. and witnessed as described by the surveyor general. This post is badly decayed, therefore
Set a sandstone, 40x18x6 ins., 24 ins. in the ground, for the 105th mile post, marked MONT on N., WYO on S.
and 105 M P on W. face; and raise a mound of stone, 4 ft. base, 3 ft. high, W. of mile post.
Land, rolling mountainous.
Soil, light, sandy, loam and adobe, on dark clay subsoil; 2nd rate.
Undergrowth, sage.
Fair grass.

[fol. 421]

Chains.

N. 89° 58′ E., on the 106th mile.
Descend over rolling land.
28.80 Draw, course N.; ascend over rough badlands.
38.60 Point of badland spur, slopes NW.; over rough badlands.
60.50 Point of spur, slopes N.; descend over rolling land.
78.50 Draw, course N.; ascend gradually.
79.07 The original 106th mile post, which is a pine post, 8x8x60 ins., marked as described by the surveyor general. This post sets on the edge of a washout and will be obliterated in one or two seasons.
Land, rolling mountainous and badlands.
Soil, light, stony, sandy loam; 3rd rate.
Very little grass.

August 3, 1914

Aug. 1, 1914.
N. 89° 38′ E. on the 107th mile.
Ascend gradually over rolling land.
.25 Set a sandstone, 18x12x8 ins., 12 ins. in the ground, for the witness cor. for the 106th mile post, marked MONT on N., WYO on S. and 106 M P W C on W. face; dig pits, 36x36x12 ins., N. and S. of the mile post, 4½ ft. dist.; and raise a mound of earth, 6 ft. base, 3 ft. high, W. of the mile post.
14.40 Ridge, bears NW. and SE.; descend gradually.
35.30 Draw, course N.; ascend gradually.
52.00 Ridge, bears NW. and SE.
72.50 Silvertip Gulch, course NW.; ascend gradually.
78.50 Road, bears NW. and SE.
79.50 The 107th mile post, which is a piece of a pine post, lying between two pits; find evidence of decayed wood in ground, at which point

Chains.

Set a sandstone, 40x16x4 ins., 28 ins. in the ground, for
the 107th mile post, marked MONT on N., WYO on S. and
107 M P on W. face; dig pits, 36x36x12 ins., N. and S.
of stone, 5 ft. dist.; and raise a mound of earth, 5½
ft. base, 2½ ft. high, W. of the mile post.
Land, rolling mountainous.
Soil, light, sandy loam and adobe; 3rd rate.
Undergrowth, sage.

N. 89° 52′ E., on the 108th mile.
Ascend gradually over rolling mountainous land.
7.70 Point of low spur, slopes SW.; descend gradually.
22.20 Draw, course S. 75° W.; ascend abruptly; enter scattering
pinon timber, bears NE. and SW.
44.80 Top of spur, bears N. and S.; descend over rolling mount-
ainous land; leave scattering pinon timber, bears N.
and S.
51.70 Outcrop of coal, bears N. and S.
58.00 Leave rolling mountainous land, bears N. and S.; over
gently rolling land, in Elk basin.
79.09 Set a sandstone, 30x18x4 ins., 20 ins. in the ground, for
the 108th mile post, marked MONT on N., WYO on S., and
108 M P on W. face; dig pits 36x36x12 ins., N. and S.
of stone, 5 ft. dist.; and raise a mound of earth, 5½
ft. base, 2½ ft. high, W. of the mile post.
Land, rolling and rolling mountainous.
Soil, light, loose, sandy loam, on sandstone base; 3rd
rate.
Timber, pinon.

Chains.

N. 89° 52′ E., on the 109th mile.
Over gently rolling land, in Elk basin.

70.40 Draw, course SW.; ascend gradually.

[fol. 422]

58.00 Leave Elk basin, bears N. and S.; ascend abruptly.

63.03 The closing cor. of T. 58 N., Rs. 99 and 100 W., previously described, falls on top of spur, slopes SW.; descend over rocky SE. slope.

68.00 Head of draw, course SE.; ascend abruptly.

74.00 Sandstone cliff, 30 ft. high, bears N. 10° W. and S. 10° E.; descend over rocky, rolling mountainous land.

79.09 The 109th mile post, which is a pine post, marked as described by the surveyor general, lying on the ground; find evidence of decayed wood at true point for mile post.

Set a sandstone 20x14x10 ins., 14 ins. in the ground, for the 109th mile post, marked MONT on N., WYO on S. and 109 M P on W. face; and raise a mound of stone, 4 ft. base, 3 ft. high, W. of the mile post.

Land, rolling and rolling mountainous.

Soil, light, loose, stony, sandy loam, on clay subsoil; 3rd rate.

Undergrowth, scattering sage.

Fair growth of grass.

Aug. 1, 1914; At the above mile post, I lay off 18° 07′ on the decl. arc; and, at 12h 06m p.m., l.m.t., observe the sun on the meridian; the resulting lat. is 44° 59½′ N.

Subdivsion of T. 58 N., R. 100 W.

Chains.

Aug. 6, 1914; At 7h 20m a.m., l.m.t., I lay off 44° 57′ N. on the lat. arc; 16° 52′ N. on the decl. arc; and determine a meridian with the solar at the cor. of secs.
1, 2, 35 and 36, on the S. bdy. of the Tp., previously
described.
Thence I run
N. 0° 10′ W., bet. secs. 35 and 36.
Descend gradually.

1.00 Head of draw, course NW.; ascend gradually over rocky SW.
slope of ridge.

3.50 Enter scattering pinon timber, bears NW. and SE.

17.00 Top of ridge, bears NW and SE.; descend abruptly over
rough mountainous land.
Leave pinon timber, bears NW. and SE.

39.00 Foot of steep descent, bears NW. and SE.; over gently
rolling land.

40.00 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 35
¼ on W. and S 36 on E. half; and dig pits, 18x18x12 ins.
N. and S. of post, 3 ft. dist.; raise a mound of earth,
3½ ft. base, 1½ ft. high, W. of cor.

80.00 Set an iron post, 3 ft. long, 2 ins. dia., 24 ins. in the ground, for cor. of secs. 25, 26, 35 and 36, with brass
cap mkd. 1914, T 58 N S 26 in NW., R. 100 W S 25 in NE.,
S 36 in SE. and S 35 in SW. quadrant; dig pits, 18x18
x 12 ins., in each sec., 5½ ft. dist.; and raise a mound
of earth, 4 ft. base, 2 ft. high, W. of cor.
Land, rough mountainous and rolling.
Soil, light, sandy, loan on sandstone base and adobe on

Chains.

gumbo subsoil; 3rd rate.
Timber, pinon.

[fol. 423]

N. 89° 30' E., on a random line bet. secs. 25 and 26.

40.00 Set temp. ¼ sec. cor.
79.94 Intersect E. bdy. of Tp., 12 lks. S. of cor. of secs. 25, 30, 31 and 36, previously described.
Thence I run
S. 89° 45' W., on true line bet. secs. 25 and 36.
Over rough stony mountainous land.
8.70 Outcrop of coal, bears NE. and SW.
15.60 Point of rocky spur, slopes SW.; descend abruptly.
24.45 Rocky draw, course SW.; ascend gradually.
26.90 Sandstone cliff, 20 ft. high, bears NE. and SW.
29.50 Point of spur, slopes SE.; descend over rocky land.
35.50 Road from coal mine to Powell, bears S. 20° E. and N. 20° W.
37.20 Silvertip gulch, course NW.; ascend gradually.
39.97 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap stmd. 1914, S 25
¼ on N. and S 36 on S. half; and dig pits, 18x18x12 ins.
E. and W. of post, 3 ft. dist.; raise a mound of earth,
3½ ft. base, 1½ ft. high, N. of cor.
44.00 Foot of abrupt ascent, bears NW. and SE.; ascend abruptly.
46.75 Rocky ridge, bears N. and S.; descend abruptly.
53.00 Gulch, course N.; ascend gradually.
55.70 Top of low ridge, bears N. and S.; descend gradually over
gently rolling land.
79.94 The cor. of secs. 25, 26, 35 and 36.
Land, rough mountainous and rolling.
Soil, light, loose, stony, sandy loam; 3rd rate.
Undergrowth, scattering sage.

N. 0° 30' W., bet. secs. 25 and 26.
Descend gradually over gently rolling land.

Chains.

20.00 Dry drain, course NE.

40.00 Set an iron post, 3 ft. long, 1 in. dia., 30 ins. in the ground, for ¼ sec. cor. with brass cap mkd. 1914, S 36
¼ sec. W., and S 35 sec. E. half., dig pits, 18x18x12 ins.,
N. and S. of post, 3 ft. dist.; and raise a mound of earth, 2½ ft. base, 1½ ft. high, W. of cor.

61.50 Dry drain, course NW.; over rolling land.

70.50 Silverlip Gulch, course NW.; ascend gradually.

75.00 Road, leave NW. and SE.

76.00 Enter rough, broken, stony land, covered with scattering
pinon timber, leave NW. and SE.

77.50 Gulch, course W.; ascend abruptly over very stony land.

80.00 Set an iron post, 3 ft. long, 1 ins. dia., 30 ins. in the ground, for cor. of secs. 25, 30, 31 and 36, with brass
cap mkd. 1914, T 39 N. S 25 in NW., R 10E W S 30 in SE.,
S. 25 in SE. and S 30 in SW. quincunx; from which
S. sublotus, 6x6x8 ft. above ground, bears N. 60° E.
40 lks. dist., mkd. T 39 N. R 10E W S 30 R 1.
S. pinon, 12 ins. dia., bears N. 40° W., 75 lks. dist., mkd. T 39 N. R 10E W S 25 R T.
S. pinon, 8 ins. dia., bears S. 67° W., 60 lks. dist.,
mkd. T 39 N. R 10E W S 30 R T.
S. pinon, 8 ins. dia., bears S. 10° 15' E., 52 lks. dist., mkd. T 39 N. R 10E W S 25 R T.
Land, rolling and rolling mountainous.
Soil, light, loam, sandy loam and adobe, on clay subsoil;
2nd rate.
Timber, pinon.

N. 69° 45' E., on a random line, bet. secs. 30 and 31.

81.00 Set temp. ¼ sec. cor.

Chains.

79.88 Intersect E. bdy. of Tp., at cor,. of secs. 24 and 25, previously described.

Thence I run

[fol. 424]

S. 89° 45′ W., on a true line bet. secs. 24 and 25.
Descend gradually over gently rolling land.

39.94 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 24
¼ on N. and S 25 on S. half; raise a mound of stone,
2 ft. base, 1½ ft. high, N. of cor.

41.00 Draw, course SW.; ascend gradually.

51.20 Enter scattering pinon timber, bears N. and S.

51.30 Point of spur, slopes S.; descend over rough mountainous land.

59.60 Draw, course S.; ascend gradually.

63.20 Point of spur, slopes SE.; descend gradually.

79.88 The cor. of secs. 23, 24, 25 and 26.
Land, rolling mountainous.
Soil, loose, sandy loam and badlands; 3rd and 4th rate.
Timber, pinon.
Aug. 6, 1914: The sky being overcast, I am unable to make observation for latitude.

N. 0° 10′ W., bet. secs. 23 and 24.
Ascend gradually over rolling mountainous land through scattering pinon timber.

2.00 Point of spur, slopes W.; descend gradually.

10.00 Dry draw, course NW.; over rolling land.
Leave scattering pinon timber, bears E. and W.

11.20 Point of spur, slopes W.; descend gradually.

13.50 Dry draw, course SW.; ascend over badlands.

27.00 Point of rocky spur on butte, slopes E.; descend over badlands.

Chains.

40.00 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 23
¼ on W. and S 24 on E. half; and raise a mound of stone,
2 ft. base, 1½ ft. high, W. of cor.

54.60 Dry draw, course W.; over rolling land.

57.10 Dry draw, course S. 70° W.; ascend gradually.

69.69 Intersect the Montana-Wyoming Boundary Line, at a point
S. 89° 52' W. 17.03 chs. from the 108th mile post, previously described.
Set an iron post, 3 ft. long, 2 ins. dia., 24 ins. in the ground, for closing cor. of secs. 23 and 24, with brass
cap mkd. 1914, MONT on N. and C C T 58 N R 100 W on S.
half, S 23 in SW. and S 24 in SE. quadrant; dig pits,
24x18x12 ins., crosswise on each line, E and W., 3 ft.
and S. of post, 7 ft. dist.; and raise a mound of earth, 4 ft. base, 2 ft. high, S. of cor.
Land, rolling and rough mountainous.
Soil, light, loose, stony, sandy loam, on sandy subsoil;
3rd rate.
Timber, pinon.

Aug. 7, 1914; At 7 a.m., l.m.t., I lay off 44° 57' N. on the lat. arc, 16° 36' N. on the decl. arc; and determine a meridian with the solar at the cor. of secs. 2,
3, 34 and 35, on S. bdy. of Tp., previously described.
Thence I run
N. 0° 11' W., bet. secs. 34 and 35.
Descend over rough, broken land, through scattering sage.

7.80 Draw, course N. 70° W.; ascend over rolling mountainous
land.

Chains.

31.80 Top of ridge, bears E. and W.; descend abruptly.

38.00 Draw, course N. 80° W.; ascend over rolling mountainous land.

40.00 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 34 ¼ on W. and S 35 on E. half; and dig pits, 18x18x12 ins.

[fol. 425]

N. and S. of post, 3 ft. dist.; and raise a mound of earth, 3½ ft. base, 1½ ft. high, W. of cor.

54.00 Top of divide between East and West Fork of Silvertip Gulch, bears N. 30° W. and S. 30° E.; descend abruptly.

73.00 Point of badland spur, slopes NE.; descend over NW. slope.

80.00 Set an iron post, 3 ft. long, 2 ins. dia., 24 ins. in the ground, for cor. of secs. 26, 27, 34 and 35, with brass cap mkd. 1914, T 58 N S 27 in NW., R 100 W S 26 in NE., S 35 in SE. and S 34 in SW. quadrant; and raise a mound of stone, 2 ft. base, 1½ ft. high, W. of cor.

Land, rolling mountainous.
Soil, sandy adobe, on stony clay subsoil; 3rd rate.
Undergrowth, scattering sage.
Very little grass.

N. 89° 50' E., on a random line bet. secs. 26 and 35.

40.00 Set temp. ¼ sec. cor.

79.82 Intersect N. and S. line, 26 lks. N. of cor. of secs. 25, 26, 35 and 36.

Thence I run
N. 89° 50' W., on a true line bet. secs. 26 and 35.
Over rolling mountainous land.

4.00 East edge of gulch, 1 ch. wide, 20 ft. deep, course North; ascend abruptly.

Chains.

34.00 Top of rocky spur, bears N. and S.; descend over rocky
W. slope.

39.91 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 26
¼ on N. and S 35 on S. half; and raise a mound of stone,
2 ft. base, 1½ ft. high, N. of cor.

44.00 Head of draw, course N.; ascend gradually.

49.00 Point of badland spur, slopes N.; descend gradually.

58.00 Badland draw, course N.; ascend gradually.

78.30 Point of badland spur, slopes NE.; descend abruptly.

79.82 Cor. of secs. 26, 27, 34 and 35.
Land, rolling mountainous.
Soil, adobe and gumbo, on gumbo subsoil; 3rd rate.
Undergrowth, scattering sage.
Few scattering juniper and pinon on ridge at 34.00 chs.
Very little grass.

Aug. 7, 1914

Aug. 8, 1914:

N. 0° 11′ W., bet. secs. 26 and 27.
Descend over rough badlands.

13.00 Dry draw, course N. 30° E.; over rolling land.

19.00 Same draw, course N. 20° W.; over rolling land.

22.10 Same draw, course N. 35° E.; over rolling land.

40.00 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 27
¼ on W. and S 26 on E. half; and raise a mound of stone,
2 ft. base, 1½ ft. high, W. of cor.

41.50 Same draw, course N. 20° W.; over rolling land.

45.00 Enter same draw, course N. from S. 30° W.; along draw.

49.00 Leave draw, course N. 30° W.; ascend gradually.

Chains.

62.40 Dry draw, course N. 40° W.; over rolling land.

80.00 Set an iron post, 3 ft. long, 2 ins. dia., 24 ins. in the ground, for cor. of secs. 22, 23, 26 and 27, with brass cap mkd. 1914, T 58 N S 22 in NW., R 100 W S 23 in NE., S 26 in SE. and S 27 in SW. quadrant; and raise a mound of stone, 2 ft. base, 1½ ft. high, W. of cor.

Land, rolling and badlands.

Soil, stony, sandy loam and adobe; 3rd rate.

Undergrowth, scattering sage.

Short growth of buffalo and bunch grass.

Aug. 8, 1914

[fol. 426]

Aug. 7, 1914: At the cor. of secs. 22, 23, 26 and 27, I set off 16° 32′ N. on the decl. arc; and at 12h 06m p.m. l.m.t., observe the sun on the meridian; the resulting lat. is 44° 59′ N.

Thence I run

S. 89° 59′ E., on a random line bet. secs. 23 and 26.

40.00 Set temp. ¼ sec. cor.

79.90 Intersect N. and S. line, 2 lks. S. of the cor. of secs. 23, 24, 25 and 26.

Thence I run

West, on a true line bet. secs. 23 and 26.

Descend abruptly over rocky spur; through scattering pinon timber.

13.00 Foot of abrupt descent, bears NW. and SE.; descend gradually; leave scattering pinon timber, bears N. and S.

17.70 Road, bears NW. and SE.

Chains.

27.00 East bank of Silvertip gulch, 1 ch. wide, 20 ft. deep;
course NW.; ascend gradually from gulch.

39.95 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 23
¼ on N. and S 26 on S. half; and raise a mound of stone,
2 ft. base, 1½ ft. high, N. of cor.

44.60 Dry draw, course NE.; ascend abruptly over rocky E. slope.

67.00 Crest of ridge, bears N. 20° W. and S. 20° E.; descend
gradually.

79.90 The cor. of secs. 22, 23, 26 and 27.
Land, rolling mountainous.
Soil, light, sandy adobe, 12 ins. deep, on stony clay subsoil; 3rd rate.
Timber, pinion.
Undergrowth, scattering sage.
Scant growth of buffalo and bunch grass.

N. 0° 11′ W., bet. secs. 22 and 23.
Ascend gradually over rolling stony land.

23.60 Crest of stony ridge, bears NW. and SE.

39.80 Draw, course NW.; ascend gradually.

40.00 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the
ground, for ¼ sec. cor., with brass cap mkd. 1914, S 22
¼ on W. and S 23 on E. half; dig pits, 18x18x12 ins.,
N. and S. of post, 3 ft. dist.; and raise a mound of
earth, 3½ ft. base, 1½ ft. high, W. of cor.

48.00 Ridge, bears NW. and SE.; descend gradually.

69.75 Intersect Montana-Wyoming Boundary Line, at a point S. 89° 38′ W. 17.90 chs. from the 107th mile post, previously
described.

Chains.

Set an iron post, 3 ft. long, 2 ins. dia., 24 ins. in the
ground, for closing cor. of secs. 22 and 23, with brass
cap mkd. 1914, MONT on N. and C C T 58 N R 100 W on S.
half; S 23 in SE. and S 22 in SW. quadrant; dig pits,
24x18x12 ins., crosswise on each line, E. and W., 3 ft.
and S. of post, 7 ft. dist.; and raise a mound of
earth, 4 ft. base, 2 ft. high, S. of cor.
Land, rolling mountainous.
Soil, loose, sandy loam, on stony subsoil; 3rd rate.
Undergrowth, scattering sage.

Aug. 7, 1914

Aug. 8, 1914. At 8 a.m., l.m.t., I lay off 44° 58′ N.
on the lat. arc; 16° 18′ N. on the decl. arc; and deter-
mine a meridian with the solar at the cor. of secs. 26,
27, 34 and 35.
Thence I run
West, on a sectional correction line, bet. secs. 27 and
34.
Descend over rough badlands.

[fol. 427]

1.20 Head of draw, course NE.; ascend abruptly.
12.80 Crest of divide, bears NW. and SE.; descend gradually
over N. slope of ridge.
40.00 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the
ground, for ¼ sec. cor., with brass cap mkd. 1914, S 27
¼ on N. and S 34 on S. half; and raise a mound of stone,
2 ft. base, 1½ ft. high, N. of cor.
43.00 Gulch, course N. 80° W.; ascend gradually along
N. slope.

Chains.

60.80 Point of spur, projects N.; descend gradually.

80.00 Set an iron post, 3 ft. long, 2 ins. dia., 24 ins. in the ground, for cor. of secs. 27, 28, 33 and 34, with brass cap mkd. 1914, T 58 N S 28 in NW., R 100 W S 27 in NE., S 34 in SE. and S 33 in SW. quadrant; and raise a mound of stone, 2 ft. base, 1½ ft. high. W. of cor.

Land, rolling mountainous.

Soil, light, sandy loam and badlands; 3rd rate.

Undergrowth, scattering sage.

Scant growth of grass.

S. 0° 12′ E., bet. secs. 33 and 34.

Ascend gradually over rolling NW. slope.

3.60 Point of spur, slopes NW.; descend gradually.

10.00 Draw, course NW.; ascend over very stony land.

20.00 Ridge, bears E. and W.; descend gradually.

30.35 Dry draw, course W.; ascend rolling NW. slope.

35.40 Point of spur, projects NW.; descend gradually.

38.50 Head of draw, course NW.; ascend gradually.

40.00 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 33 ¼ on W. and S 34 on E. half; and raise a mound of stone, 2 ft. base, 1½ ft. high, W. of cor.

58.33 Point of rocky spur, projects SW.; descend over rocky S. slope.

77.00 Dry draw, course W.; ascend gradually.

79.70 Intersect S. bdy. of Tp., 1.97 chs. S. 89° 45′ W. of the cor. of secs. 3 and 4, previously described.

Set an iron post, 3 ft. long, 2 ins. dia., 24 ins. in the ground, for closing cor. of secs. 33 and 34, with brass cap marked 1914, T 58 N R 100 W C C on N. and T 57 N S

Chains.

4 on S. half, S 33 in NW. and S 34 in NE. quadrant; and
raise a mound of stone, 2 ft. base, 1½ ft. high, N. of
cor.
Land, rolling mountainous.
Soil, light, loose, sandy loam, 12 ins. deep, on sandstone base; 3rd rate.
Undergrowth, scattering sage.
Grass, scattering bunch and buffalo.

From the cor. of secs. 27, 28, 33 and 34, I run
N. 0° 12 W., bet. secs. 27 and 28.
Descend over rough N. slope.
14.20 Dry draw, course W.; over rolling land.
20.85 Point of rocky spur, slopes SW.; descend gradually.
39.00 Draw, course SW.; ascend abruptly.
40.00 Point for ¼ sec. cor., falls in draw.
42.00 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for witness cor. to ¼ sec. cor., with brass
cap mkd. 1914, S 28 ¼ on W. and S 27 on E. half, W C
on S. half, and raise a mound of stone, 2 ft. base, 1½
ft. high, W. of cor.
71.00 Top of high ridge, bears NW. and SE.; descend abruptly
over badlands.
80.00 Set an iron post, 3 ft. long, 2 ins. dia., 24 ins. in the
ground, for cor. of secs. 21, 22, 27 and 28, with brass
cap mkd. 1914, T 58 N S 21 in NW., R 100 W S 22 in NE.,

[fol. 428]

S 27 in SE. and S 28 in SW. quadrant; and raise a mound
of stone, 2 ft. base, 1½ ft. high, W. of cor.
Land, rolling mountainous.

Chains.

Soil, light, loose, sandy loam and badlands; 3rd and 4th rate.
Undergrowth, scattering sage.

East, on a random line bet. secs. 22 and 27.
40.00 Set temp. ¼ sec. cor.
79.99 Intersect N. and S. line, 2 lks. N. of cor. of secs. 22, 23, 26 and 27.
Thence I run
N. 89° 59′ W., on a true line, bet. secs. 22 and 27.
Descend gradually over rolling mountainous land.
16.00 Draw, course NW.; ascend over rough, rocky land.
39.00 Point of rocky spur, slopes N.; descend abruptly
39.99½ Set an iron post, 3 ft. long, 1 in. dia., rocked in a mound of stone, for ¼ sec. cor., with brass cap mkd.
1914, S 22 ¼ on N. and S 27 on S. half; and raise a mound of stone, 2 ft. base, 1½ ft. high, N. of cor.
46.00 Draw, course N. 20° E.; ascend abruptly over badlands.
69.30 Point of badland spur, slopes N.; descend over badlands.
79.99 The cor. of secs. 21, 22, 27 and 28.
Land, rolling mountainous and badlands.
Soil, light, sandy loam and badlands; 3rd and 4th rate.
Undergrowth, scattering sage.
Very little grass.

N. 0° 12′ W. bet. secs. 21 and 22.
Descend gradually over badlands.
4.00 Ridge, bears NW. and SE.; descend abruptly.
39.00 Gulch, course N. 30° E.; ascend gradually over rolling land.

Chains.

40.00 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 21 ¼ on W. and S 22 on E. half; dig pits, 18x18x12 ins., N. and S. of post, 3 ft. dist.; and raise a mound of earth, 3½ ft. base, 1½ ft. high, W. of cor.

56.00 Ridge, bears NW. and SE.; descend over rolling badlands.

69.37 Intersect the Montana-Wyoming Boundary Line, at a point S. 89° 58′ W. 18.75 chs. from the 106th mile post, previously described.

Set an iron post, 3 ft. long, 2 ins. dia., 12 ins. in the ground, and rocked in 12 ins., for closing cor. of secs. 21 and 22, with brass cap mkd. 1914, MONT on N. and C C T 58 N R 100 W on S. half, S 22 in SE. and S 21 in SW. quadrant; and raise a mound of stone, 2 ft. base, 1½ ft. high, S. of cor.

Land, rolling mountainous and badlands.

Soil, light, loose, sandy adobe and badlands on stony clay subsoil; 4th rate.

Undergrowth, scattering sage.

Fair growth of buffalo grass.

August 8, 1914

Aug. 10, 1914: At 7 a.m., l.m.t., I lay off 44° 58′ N. on the lat. arc; 15° 45′ N. on the decl. arc; and determine a meridian with the solar at the cor. of secs. 27, 28, 33 and 34.

Thence I run

Chains.

West, on a sectional correction line, bet. secs. 28 and
33.
Descend over rolling mountainous land.
8.00 Dry draw, course N.; ascend gradually.
12.00 Point of spur, slopes N.; descend over rocky land.
28.20 Draw, course SW.; ascend over rocky spur.

[fol. 429]

Chains
32.00 Point of spur, slopes SW.; descend gradually.
40.00 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 28
¼ on N. and S 33 on S. half; and raise a mound of stone,
2 ft. base, 1½ ft. high, N. of cor.
40.90 Edge of abrupt descent, bears NW. and SE.; descend abrupt-
ly.
48.60 Dry gulch; course N.; ascend rapidly.
52.00 Point of spur, slopes N.; descend gradually.
53.00 Main gulch, course N.; ascend abruptly.
64.90 Ridge, bears N. and S.; descend.
76.25 Draw, course NW.; over rolling land.
78.80 Draw, course N. 20° E.; ascend gradually.
80.00 Set an iron post, 3 ft. long, 2 ins. dia., 24 ins. in the ground, for cor. of secs. 28, 29, 32 and 33, with brass
cap mkd. 1914, T 58 N S 29 in NW., R 100 W S 28 in NE.,
S 33 in SE. and S 32 in SW. quadrant; and raise a mound
of stone, 2 ft. base, 1½ ft. high, W. of cor.
Land, rolling mountainous.
Soil, light, loose, sandy loam; 3rd rate.
Undergrowth, sage.
Fair growth of bunch grass.

S. 0° 12' E., bet. secs. 32 and 33.
Over rolling land.
3.00 Draw, course N. 20° E.; ascend over rolling land.

Chains

33.50 Stony spur, projects W.; over rough, stony W. slope.

42.00 Set an iron post, 3 ft. long, 1 in. dia., 20 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1904, S 32
¼ on W. and S 33 on E. half; and raise a mound of stone,
2 ft. base, 1½ ft. high, W. of cor.

56.00 Point of rocky spur, projects W.; descend over rocky land.

62.80 Gulch, course N. 10° W.; ascend over NE. slope of ridge.

79.00 Crest of ridge, bears N. 10° W. and SE.; descend gradually

80.17 Intersect S. bdy. of Tp., at a point N. 89° 47' W. 2.76
chs. from the cor. of secs. 4 and 5, previously described.
Set an iron post, 3 ft. long, 2 ins. dia., 24 ins. in the ground, for closing cor. of secs. 32 and 33, with brass
cap mkd. 1904, T 38 N R 10W C C on N. and T 37 N S
5 on S. half; S 32 in SW. and S 33 in NE. quadrant; and
raise a mound of stone, 2 ft. base, 1½ ft. high, S. of cor.
Land, rolling mountainous.
Soil, light, loose, sandy loam, on sandstone base; bed
rock.
Timber, [illegible], scattering cover.
Poor growth of bunch grass.

From the cor. of secs. 28, 29, 32 and 33, I run
S. 0° 15' W., bet. secs. 32 and 33.
Descend gradually over rolling land.

11.50 Creek, 40 lks. wide, 10 ft. deep, course S.E.; ascend gradually.

16.00 Foot of abrupt mount, bears NE. and SE.; ascend abrupt
ly.

Chains

[illegible] Top of slight ascent, leave NE. and SW.; cross rolling land

[illegible] Edge of slight descent, leave E. and W.; descend slightly

[illegible] Gulch, [illegible] lin. wide, [illegible] ft. deep, course S. [illegible] E.; cross rolling E. slope of ridge.

[illegible] Set an iron post, 2 ft. long, 1 in. dia., [illegible] in. in the ground, for ½ sec. cor., with brass cap mkd. [illegible] ¼ sec. W. and S 20 on E. half, and raise a mound of stone.

2 ft. bare, [illegible] ft. high, W. of cor.

[illegible]

[illegible] Gulch, [illegible] lin. wide, [illegible] ft. deep, course S. [illegible] W.; ascend gradually over rolling land.

[illegible] Set an iron post, 2 ft. long, 1 in. dia., [illegible] in. in the ground, for cor. of secs. [illegible], [illegible], [illegible] and [illegible], with brass cap mkd. [illegible], [illegible] S. [illegible] to [illegible], [illegible] E. [illegible] to [illegible], S. [illegible] to [illegible], and S. [illegible] to [illegible], quadrant, and raise a mound of stone, 2 ft. bare, [illegible] ft. high, W. of cor.

Land, rolling and rolling undergrowth.

Soil, light, loose, sandy loam, [illegible] thick clay subsoil, [illegible] and [illegible] rock.

Undergrowth, scattering [illegible].

Plan growth of hazel and [illegible] pasture.

Iron, [illegible] [illegible] W. the above cor., 1 [illegible] off [illegible] S.

on the [illegible] cor., and at [illegible] this cor., [illegible], the same.

for one on the quadrant, for [illegible] [illegible] [illegible] S.

[illegible] set a [illegible] iron [illegible] cors. [illegible] and [illegible].

[illegible] [illegible] cors. ½ sec. cor.

[illegible] Intersect S. and E. line of the cor. of secs. [illegible], [illegible], [illegible] and [illegible].

Chains.

Thence I run
West, on a true line bet. secs. 21 and 28.
Descend abruptly over badlands.

1.00 Draw, course N. 20° W.; ascend abruptly over badlands.

5.40 Point of badlands spur, projects N. 20° W.; descend over
rough badlands.

9.70 Draw, course N. 30° W.; ascend over badlands.

16.50 Rocky badland ridge, bears N. and S.; descend.

22.70 Draw, course N. 25° W.; ascend over badlands.

30.80 Top of ridge, bears NW. and SE; descend gradually over
rolling SW. slope.

40.05 Set an iron post, 3 ft. long. 1 in dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 21
¼ on N. and S 28 on S. half; and raise a mound of stone
2 ft. base, 1½ ft. high, N. of cor.

64.00 Draw, course S.; ascend gradually.

68.00 Point of rocky spur, slopes SW.; descend gradually.

77.70 Dim road, bears N. and S.

80.10 The cor. of secs. 20, 21, 28 and 29.
Land, rolling mountainous and badlands.
Soil, light, sandy, loam and badlands; 3rd and 4th rate.
Undergrowth, scattering sage.
Fair growth of grass.
N. 0° 12′ W., bet. secs. 20 and 21.
Ascend gradually over rolling mountainous land.

10.40 Dim road, bears N. 30° W. and S. 30° E.

37.30 Draw, course W.; ascend gradually.

40.00 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 20
¼ on W. and S 21 on E. half; dig pits, 18x18x12 ins.,
N. and S. of post, 3 ft. dist.; and raise a mound of earth, 3½ ft. base, 1½ ft. high, W. of cor.

49.50 Point of spur, slopes W.; descend along rough W. slope.

Chains

65.40 Gulch, course NW.; ascend gradually.

69.01 Intersect the Montana-Wyoming Boundary Line, at a point
S. 89° 06′ W. 19.61 chs. from the 105th mile post, previously described.
Set an iron post, 3 ft. long, 2 ins. dia., 24 ins. in the
ground, for closing cor. of secs. 20 and 21, with brass
cap mkd. 1914, T 58 N R 100 W C C on S. and MONT on N.
half, S 21 in SE. and S 20 in SW. quadrant; and raise a
mound of stone, 2 ft. base, 1½ ft. high, S. of cor.

[fol. 431]

Land, rolling mountainous.
Soil, light, loose, sandy loam; 4th rate.
Undergrowth, sage.
Fair growth of grass.

From the cor. of secs. 28, 29, 32 and 33, I run
West, on a sectional correction line, bet. secs. 29 and
32.
Ascend gradually.

4.20 Point of spur, projects N.; descend gradually.

11.10 Gulch, course N. 30° E.: ascend over rolling mountainous
land.

36.80 Top of ridge, bears NE. and SW.; descend gradually over
rolling land.

40.00 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 29
¼ on N. and S 32 on S. half; and raise a mound of stone,
2 ft. base, 1½ ft. high, N. of cor.

48.50 Head of draw, course N.; ascend gradually.

52.60 Point of low spur, slopes N.; descend gradually.

Chains

70.00 Gulch, course N.; ascend gradually.

80.00 Set an iron post, 3 ft. long, 2 ins. dia., 24 ins. in the ground for cor. of secs. 29, 30, 31 and 32, with brass cap mkd. 1914, T 58 N S 30 in NW., R 100 W S 29 in NE., S 32 in SE. and S 31 in SW. quadrant; and raise a mound of stone, 2 ft. base, 1½ ft. high, W. of cor.
Land, rolling and rolling mountainous.
Soil, light, loose, sandy loam; 3rd rate.
Undergrowth, sage.
Fair growth of grass.

Aug. 10, 1914

Aug. 11, 1914: At 7 a.m. l.m.t., I lay off 44° 58′ N. on the lat. arc; 15° 28′ N. on the decl. arc; and determine a meridian with the solar at the cor. of secs. 29, 30, 31 and 32.
Thence I run
S. 0° 13′ E., bet. secs. 31 and 32.
Ascend gradually over rolling land.

6.30 Divide, between Silvertip and Big Sandy Gulch, bears NW. and SE.; descend over rough broken W. slope.

10.20 Road, bears NW. and SE.

27.00 Head of draw, course SW.; ascend over badlands.

32.20 Point of spur, slopes W.; descend.

35.00 Head of draw, course SW.; ascend gradually.

37.30 Point of rocky spur, projects W.; descend.

40.00 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 31 ¼ on W. and S 32 on E. half; and raise a mound of stone, 2 ft. base, 1½ ft. high, W. of cor.

40.10 Head of badland draw, course W.; over rolling land.

46.80 Point of rocky spur, slopes SW.; descend abruptly.

Chains

68.00 Head of draw, course W.; ascend gradually over rolling land.

80.19 Intersect S. bdy. of Tp., at a point S. 89° 53′ W. 2.94 chs. from the cor. of secs. 5 and 6, previously described.

Set an iron post, 3 ft. long, 2 ins. dia., 24 ins. in the ground, for closing cor. of secs. 31 and 32, with brass cap mkd. 1914, T 58 N R 100 W C C on N., T 57 N S 6 on S. half, S 31 in NW. and S 32 in NE. quadrant; dig pits, 24x18x12 ins., crosswise on each line, E. and W. 3 ft. and N. of post, 7 ft. dist.; and raise a mound of earth, 4 ft. base, 2 ft. high, N. of cor.

[fol. 432]

Land, rolling mountainous and badlands.
Soil, light, sandy, loam and gumbo; 3rd and 4th rate.
Undergrowth, scattering sage.
Very little grass.

From the cor. of secs. 29, 30, 31 and 32, I run West, on a random line, bet. secs. 30 and 31.

40.00 Set temp. ¼ sec. cor.

77.67 Intersect W. bdy. of Tp., 25 lks. N. of the cor. of secs. 25, 30, 31 and 36, previously described.

Thence I run N. 89° 49′ E., on a true line bet. secs. 30 and 31.
Ascend gradually over rolling land.

2.60 Point of spur, projects S.; descend gradually.
14.70 Draw, course S.; ascend gradually.
18.70 Point of low spur, slopes S.; descend gradually.
22.00 Dry draw, course S.; ascend gradually.
25.50 Point of low spur, slopes SW.; descend gradually.
29.70 Draw, course SW.; ascend over rolling land.

Chains

37.67 Set an iron post, 3 ft. long, 1 in. dia., 16 ins. in the ground, and rocked in 10 ins., for ¼ sec. cor., with
brass cap mkd. 1914, S 30 ¼ on N. and S 31 on S. half:
and raise a mound of stone, 2 ft. base, 1½ ft. high,
N. of cor.

43.70 Rocky spur, slopes SW.; descend over rolling land.

61.30 Draw, course SW.; ascend abruptly over rough badlands.

72.40 Dim road, bears NW. and SE.

72.60 Divide between Silvertip and Big Sandy Gulch, bears NW.
and SE.; descend gradually.

77.67 The cor. of secs. 29, 30, 31 and 32.
Land, rolling mountainous and badlands.
Soil, loose, sandy, loam and badlands; 3rd rate.
Undergrowth, scattering sage.
Very little grass.

N. 0° 13′ W., bet. secs. 29 and 30.
Descend gradually over gently rolling land.

20.00 Draw, course E.

40.00 Head of draw course E.; ascend gradually.
Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 30
¼ on W. and S 29 on E. half; and raise a mound of stone,
2 ft. base, 1½ ft. high, W. of cor.

56.30 Ridge, bears NE. and SW.; descend over rolling NW. slope.

71.00 Dry draw, course N. 20° W.; descend over rolling W. slope.

80.00 Set an iron post, 3 ft. long, 2 ins. dia., 12 ins. in the ground, and rocked in 12 ins., for cor. of secs. 19, 20, 29 and 30, with brass cap mkd. 1914, T 58 N S 19 in
NW., R 100 W S 20 in NE., S 29 in SE. and S 30 in SW.

Chains.

quadrant; and raise a mound of stone, 2 ft. base, 1½ ft.
high, W. of cor.
Land, gently rolling and rolling mountainous.
Soil, light, loose, sandy loam, on sandy subsoil; 2nd
rate.
Undergrowth, scattering sage.
Fair growth of bunch grass.
Aug. 11, 1914: At the above cor., I set off 15° 23′ N.
on the decl. arc; and at 12h 05m p.m., l.m.t., observe
the sun on the meridian; the resulting lat. is 44° 59′
N.

East, on a random line bet. secs. 20 and 29.
40.00 Set temp. ¼ sec. cor.
80.00 Intersect N. and S. line, at the cor. of secs. 20, 21, 28 and 29.
West, on a true line bet. secs. 20 and 29.
Descend gradually over rolling land.

[fol. 433]

4.20 Gulch, course N.; ascend over rolling mountainous land.
11.00 Foot of abrupt ascent, bears N. and S.; ascend abruptly.
15.75 Ridge, bears N. and S.; descend gradually.
24.50 Gulch, course N.; ascend gradually.
33.20 Point of spur, slopes N.; descend over rolling land.
40.00 Set an iron post, 3 ft. long. 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 20
¼ on N. and S 29 on S. half; and raise a mound of stone,
2 ft. base, 1½ ft. high, N. of cor.
46.10 Draw, course NE.; ascend gradually over rolling land.
68.00 Point of spur, slopes N.; descend over rolling land.

Chains.

80.00 The cor. of secs. 19, 20, 29 and 30.
Land, rolling mountainous.
Soil, light, loose, sandy loam, on clay subsoil; 3rd rate.
Undergrowth, scattering sage.
Fair growth of bunch grass.

From previous retracement of W. bdy. of sec. 30, I find
that I cannot close on the original cor. of secs. 19, 24, 25 and 30, in such a manner that the line between
secs. 19 and 30, will be within 21′ of arc. from a west line.
Therefore, from the cor. of secs. 19, 20, 29 and 30, I run
S. 89° 49′ W., on a true line, bet. secs. 19 and 30.
Descend abruptly, over rocky W. slope.
3.80 Gulch, with water, 1 lk. wide, ½ in. deep, course NE.;
ascend abruptly.
4.00 Iron Tank spring, bears S., 20 lks. dist.
21.30 Top of abrupt ascent, bears NE. and SW.; ascend gradually
over rolling land.
26.90 Road, bears NE and SW.
34.00 Same road, bears N. 80° W. and S. 80° E.
Set an iron post, 3 ft. long, 2 ins. dia., 24 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 19
¼ on N. and S 30 on S. half; and raise a mound of stone,
2 ft. base, 1½ ft. high, N. of cor.
45.40 Point of low spur, projects N.; descend gradually.
53.40 Head of draw, course NE.; ascend gradually.
59.70 Road, bears NW. and SE.
60.20 Ridge, bears NW. and SE.; divide between Silvertip and
Big Sandy Gulches; descend abruptly over rough W. slope.
77.43 Intersect W. bdy. of Tp., at a point N. 0° 21′ W. 36 lks.

Chains.

dist. from the cor. of secs. 24 and 25, previously described.

Set an iron post, 3 ft. long, 2 ins. dia., 24 ins. in the ground, for closing cor. of secs. 19 and 30, with brass cap mkd. 1914, T 58 N on N., R 101 W S 24 on W. and R 100 W S C C on E. half, S 19 in NE, and S 30 in SE., quadrant; and raise a mound of stone, 2 ft. base, 1½ ft. high, E. of cor.

Land, rolling and rolling mountainous.

Soil, light, loose, sandy loam and badlands; 3rd and 4th rate.

Undergrowth, scattering sage.

Fair growth of grass.

From the cor. of secs. 19, 20, 29 and 30, I run N. 0° 13′ W., bet. secs. 19 and 20.

Descend rapidly over rough, rocky NW. slope.

5.80 Draw, course N. 60° E.; over rolling land.

7.20 Road, bears N. 60° E. and S. 60° W.

9.20 Draw, course E; ascend abruptly over rocky S. slope.

17.60 Top of abrupt ascent bears N. and S.; ascend gradually along E. slope of spur.

39.00 Top of spur, bears N. 10° E. and S. 10° W.; ascend gradually over rolling E. slope.

[fols. 434-435]

40.00 Set an iron post, 3 ft. long, 1 in. dia., 26 ins. in the ground, for ¼ sec. cor., with brass cap mkd. 1914, S 19 ¼ on W. and S 20 on E. half; and raise a mound of stone, 2 ft. base, 1½ ft. high, W. of cor.

68.36 Intersect the Montana-Wyoming Boundary Line, at a point

Chains.

N. 89° 21′ W. 20.65 chs. from the 104th mile post, previously described.

Set an iron post, 3 ft. long, 2 ins. dia., 24 ins. in the ground, for closing cor. of secs. 19 and 20, with brass cap mkd. 1914, MONT on N., and T 58 N C C R 100 W on S. half, S 20 in SE. and S 19 in SW. quadrant; and raise a mound of stone, 2 ft. base, 1½ ft. high, S. of cor.

Land, rolling mountainous.

Soil, light, loose, sandy loam and adobe; 3rd rate.

Undergrowth, scattering sage.

Fair growth of bunch grass.

Aug. 11, 1914

Names and Duties of Assistants

J. W. Green, Head chainman.
E. E. Daiber, Rear chainman.
Fred Reynolds, Cornerman and rear chainman.
Otto Hirsig, Flagman.
Ray C. Griffith, Flagman.
Herbert Wike, Cornerman.

General Description

This township is located on the tributaries of Silvertip Gulch, about 18 miles north of Powell, Wyoming, and about 10 miles by road, east of the Clark Fork of the Yellowstone River.

The greater part of this township is rough, broken, stony land and badlands of very little value for grazing purposes and of no value for agricultural purposes.

There are a few scattering patches of pinon and scrub juniper timber, which can be used for firewood only.

Along the two branches of Silvertip Gulch, are a few springs, very strong with alkali, which furnish the only water for stock purposes.

There are several indications of coal in the eastern part of this township and in section 25, a working coal mine.

The eastern half of section 24 is located as oil placer claims.

There are no settlers in this fractional township.

A. D. Davis, U. S. Transitman.

Final affidavits in Book "I."

[fols. 436-347] Approval

Office of the United States Surveyor General,

Cheyenne, Wyoming, December 9, 1945.

The foregoing field notes of the Dependent Resurvey of the Montana-Wyoming Boundary Line from the 102nd to the 109th mile post, and the survey of the Subdivision Lines of Township No. 58 North, Range No. 100 West, of the Sixth Principal Meridian, in the State of Wyoming, executed by Arthur D. Davis, U. S. Transitman, under his special instructions dated July 14, 1914, having been critically examined, and the necessary corrections and explanations made, the said field notes, and the surveys they describe, are hereby approved.

Charles L. Decker, U. S. Surveyor General.

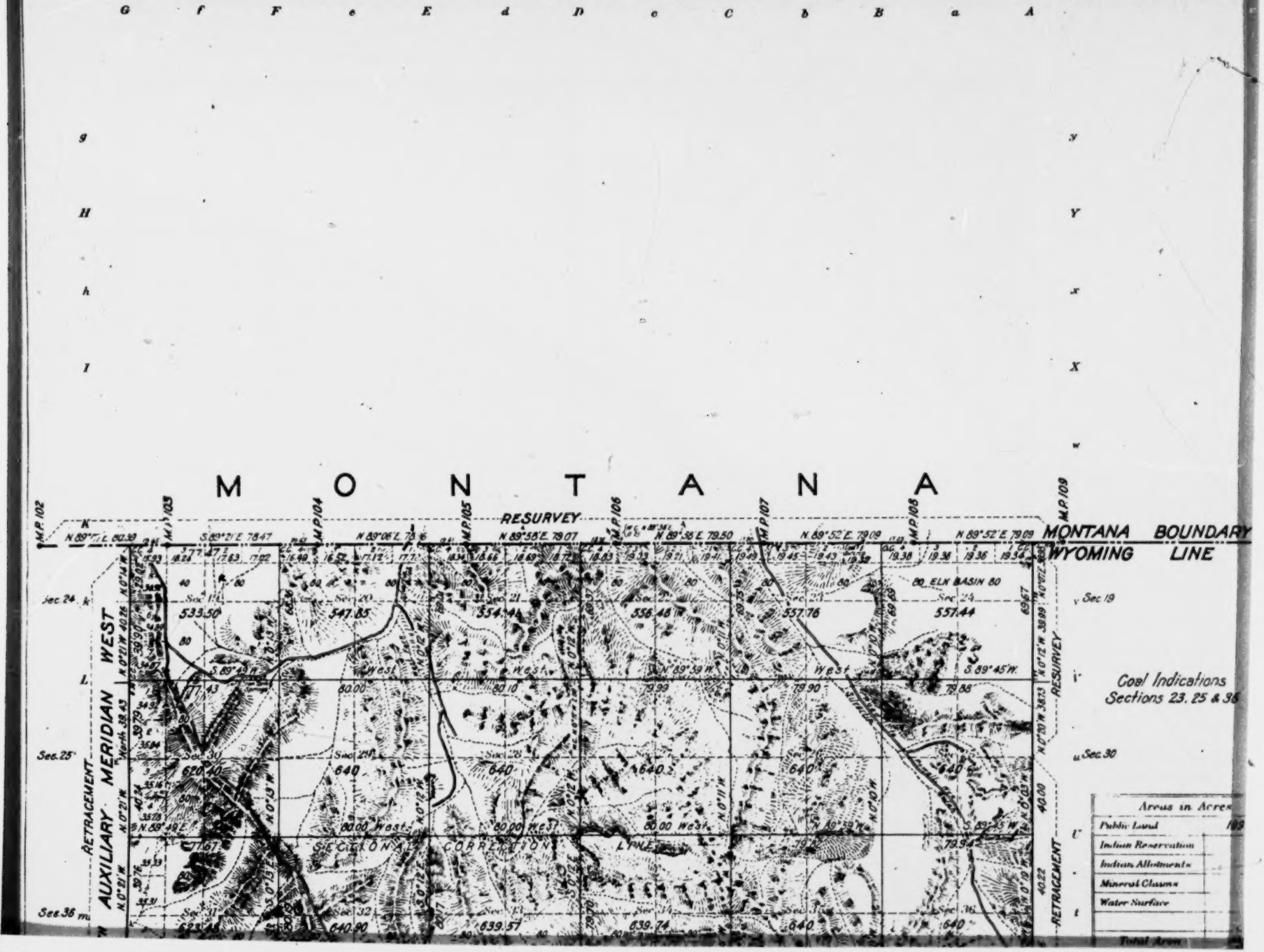
I certify that the foregoing transcript of the field notes of the above-described surveys in the State of Wyoming, has been correctly copied from the original notes on file in this office.

Charles L. Decker, U. S. Surveyor General.

(Here follow 2 Photolithographs, side folios 438-439, 440-441)

PLAINTIFF'S EXHIBIT 45

Fractional Township No. 58 North, Range No. 100 West of the Sixth Principal Meridian, Wyoming

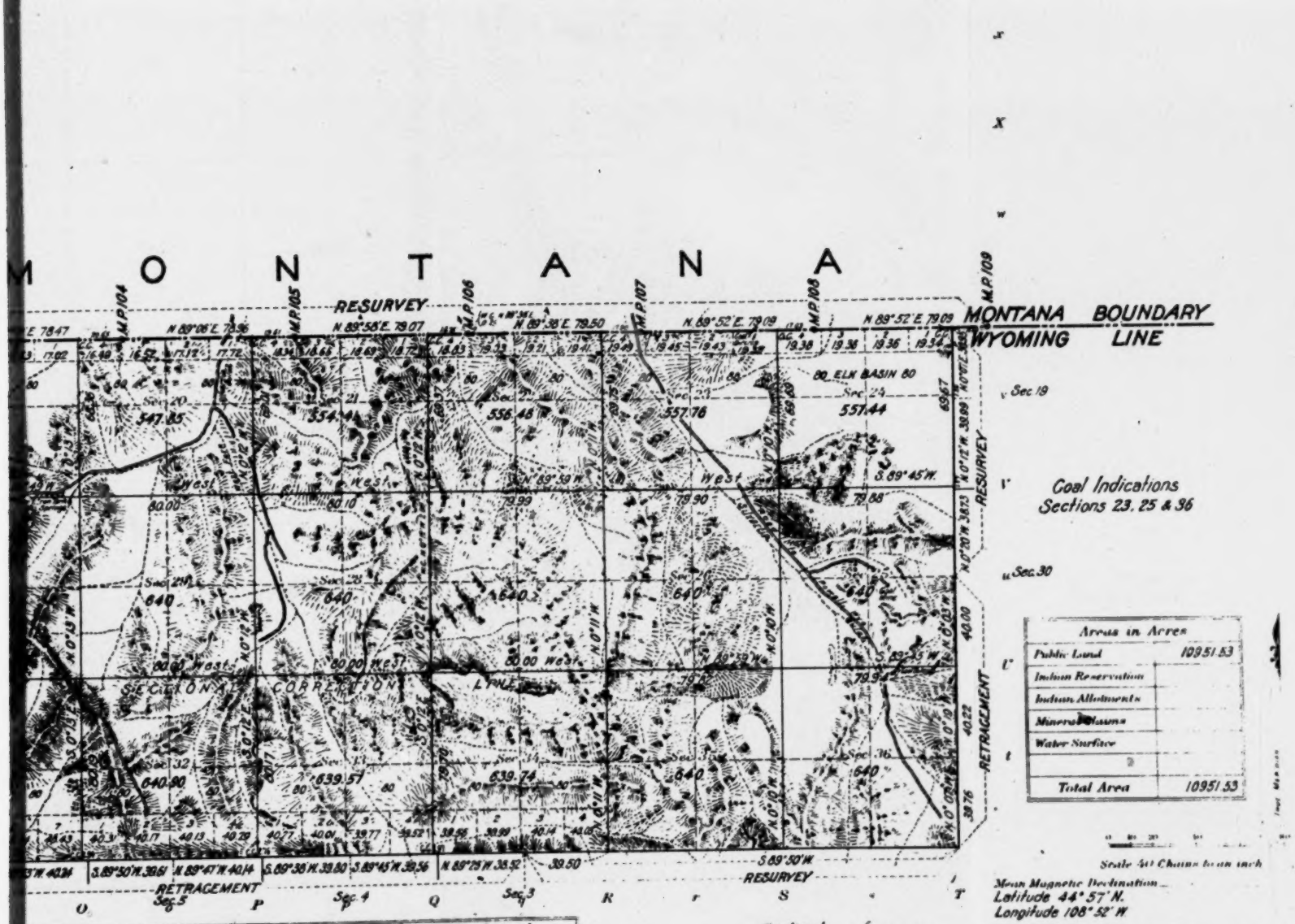


PLAINTIFF'S EXHIBIT 45

Township № 58 North, Range № 100 West of the Sixth Principal Meridian, Wyoming

F e E d D c C b B a A

M O N T A N A



Areas in Acres	
Public Land	10951.53
Indian Reservation	
Indian Allotments	
Mineral Claims	
Water Surface	
Total Area	10951.53

Scale 40 Chains to an inch

Mean Magnetic Declination
Latitude 44° 57' N.
Longitude 108° 52' W

Whom Surveyed	Group No.	Group Date	Amount of Surveys Mls.	chs.	lks.	When Surveyed Begun	When Surveyed Completed
Arthur D. Davis	28	July 14, 1914	26	22	97	Aug. 6, 1914	Aug. 11, 1914
" " "	"	" " "	1	67	68	" " "	" " "
" " "	"	" " "	5	77	77	Aug. 1, 1914	Aug. 3, 1914
" " "	"	" " "	2	69	11	" 3 "	" " "
" " "	"	" " "	1	29	61	July 31, "	Aug. 1, "
" " "	"	" " "	1	39	84	" " "	" " "
" " "	"	" " "	2	39	50	Aug. 5 "	Aug. 6 "
" " "	"	" " "	3	38	39	" " "	" " "
C. Coleman	187	Mar. 8, 1892	7	71	21	June 2, 1892	June 10, 1892

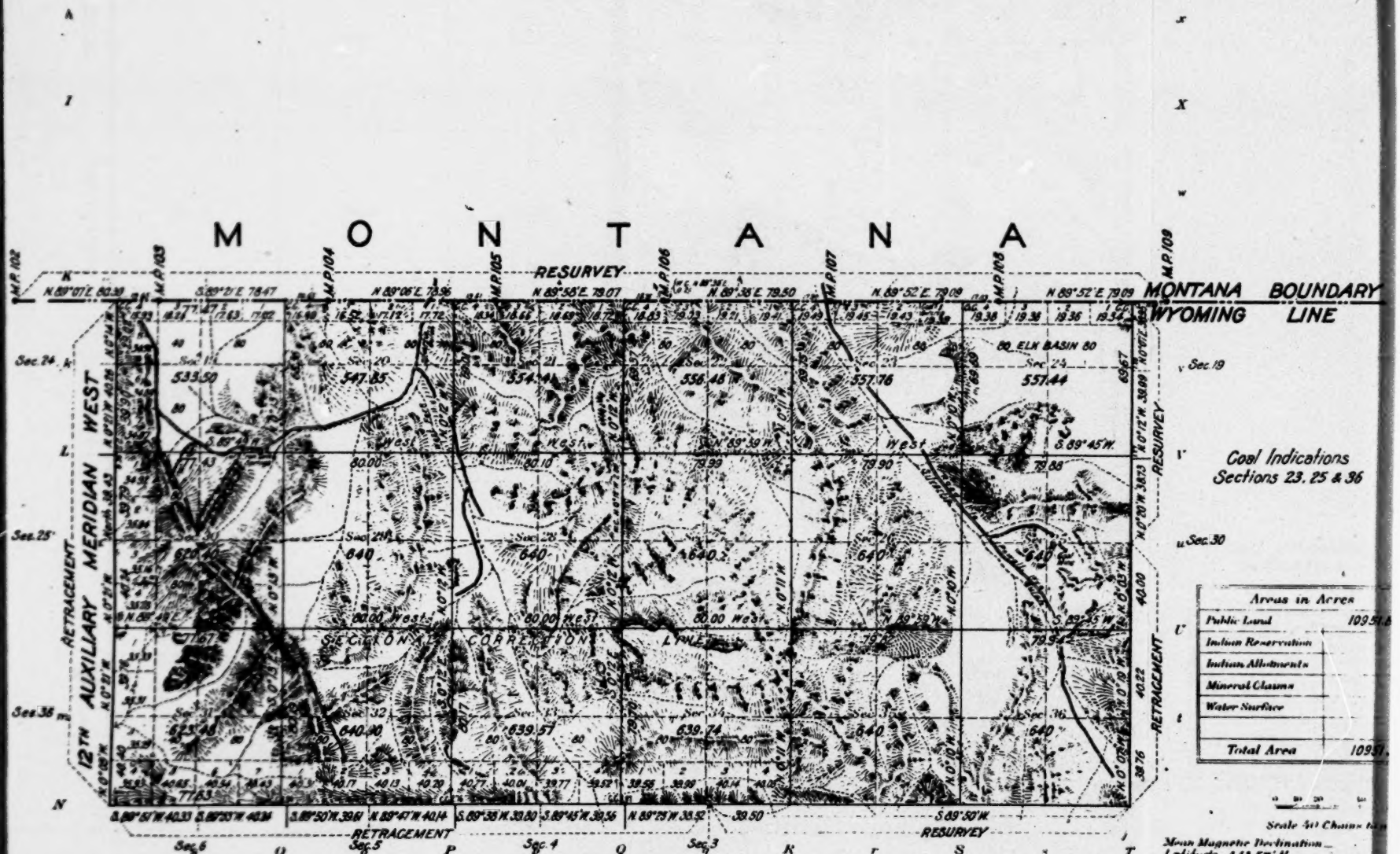
Fractional

The above map of Township No. 58 North Range No. 100 West of the Sixth Principal Meridian, Wyoming is strictly conformable to the field notes of the survey thereof on file in this office, which have been examined and approved

U. S. Surveyor General's Office.
Cheyenne, Wyoming, December 9, 1915.

Charles L. Decker
Surveyor General

438-439



Surveys Designated	By Whom Surveyed	Group No.	Group Date	Amount of Surveys Mls.	Amount of Surveys chs.	Amount of Surveys lks.	When Surveyed Begun	When Surveyed Completed
Subdivisions	Arthur D. Davis	25	July 14, 1914	26	20	97	Aug. 6, 1914	Aug. 11, 1914
Connections	" " "	"	" " "	1	67	68	" " "	" " "
Meridian, Montana-Wyoming Boundary Line	" " "	"	" " "	6	77	77	Aug. 1, 1914	Aug. 3, 1914
Retracement 12th Aux. Mer. West	" " "	"	" " "	2	69	11	" 3 "	" " "
Resurvey East Bdy.	" " "	"	" " "	1	29	61	July 31, "	Aug. 1, "
Retracement East Bdy.	" " "	"	" " "	1	39	94	" " "	" " "
Resurvey South Bdy.	" " "	"	" " "	2	20	50	Aug. 5 "	Aug. 6 "
Retracement South Bdy.	" " "	"	" " "	3	58	20	" " "	" " "
1st Aux. Mer. West, South Bdy., East Bdy.	A.C. Cameron	247	Mar. 1, 1892	7	71	21	June 2, 1892	June 10, 1892

Fractional

The above map of A Township No. 58 North Range No. 100 West of the Sixth Principal Meridian, Wyoming is strictly conformable to the field notes of the survey thereof in this office, which have been examined and approved

U. S. Surveyor General's Office.

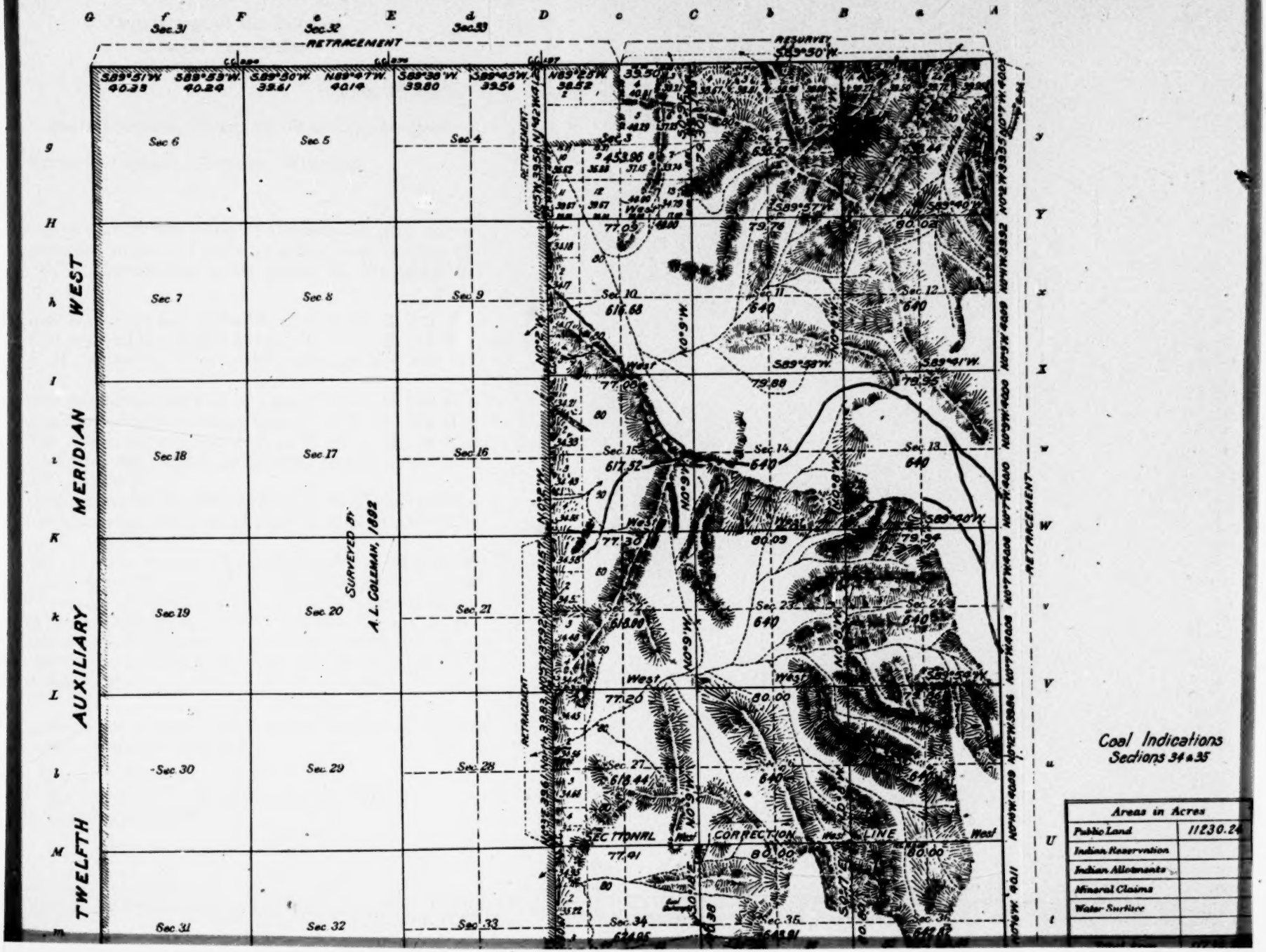
Cheyenne, Wyoming, December 9, 1915

Charles L. [illegible]

Surveyor Gen[illegible]

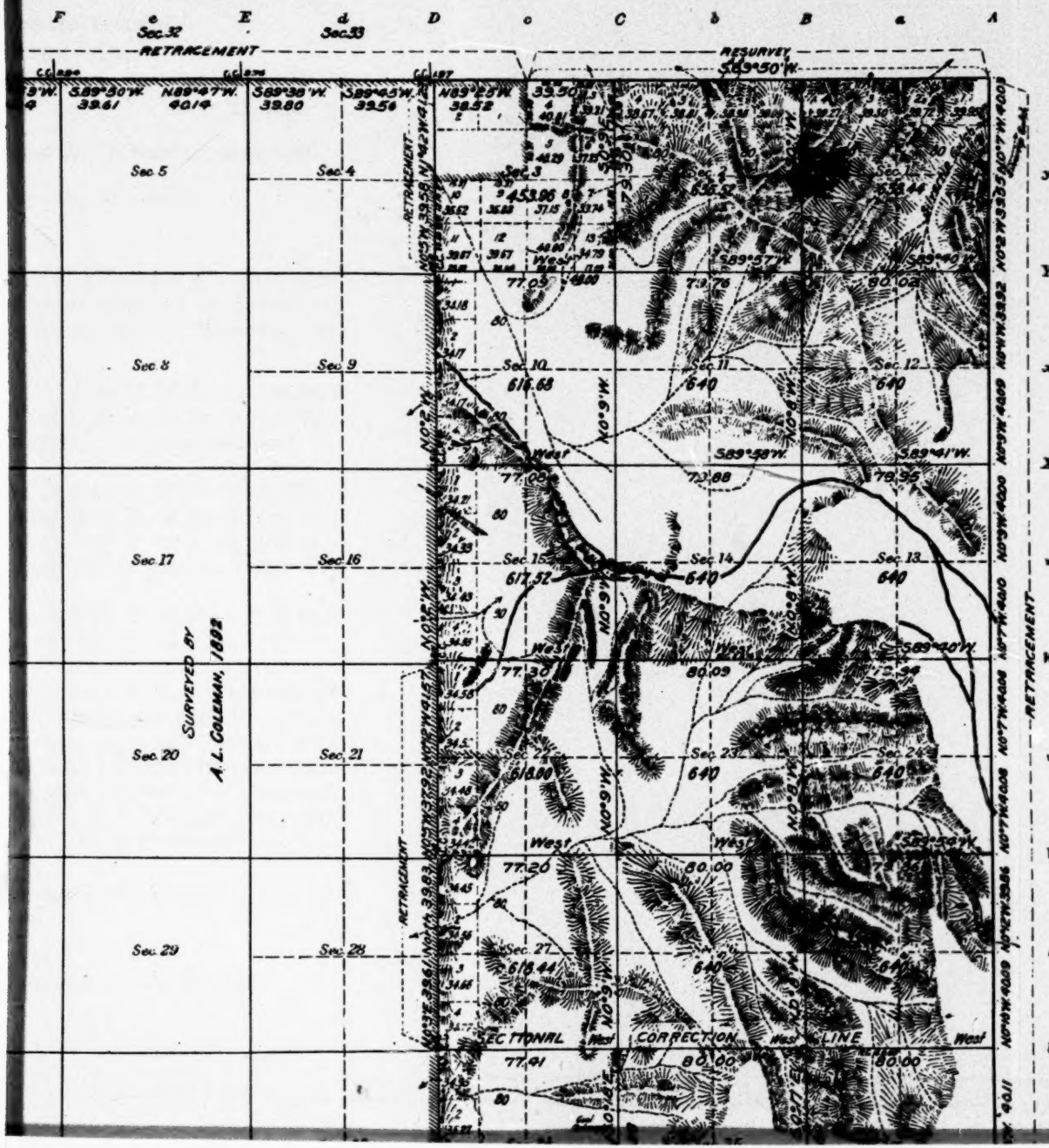
PLAINTIFF'S EXHIBIT 46

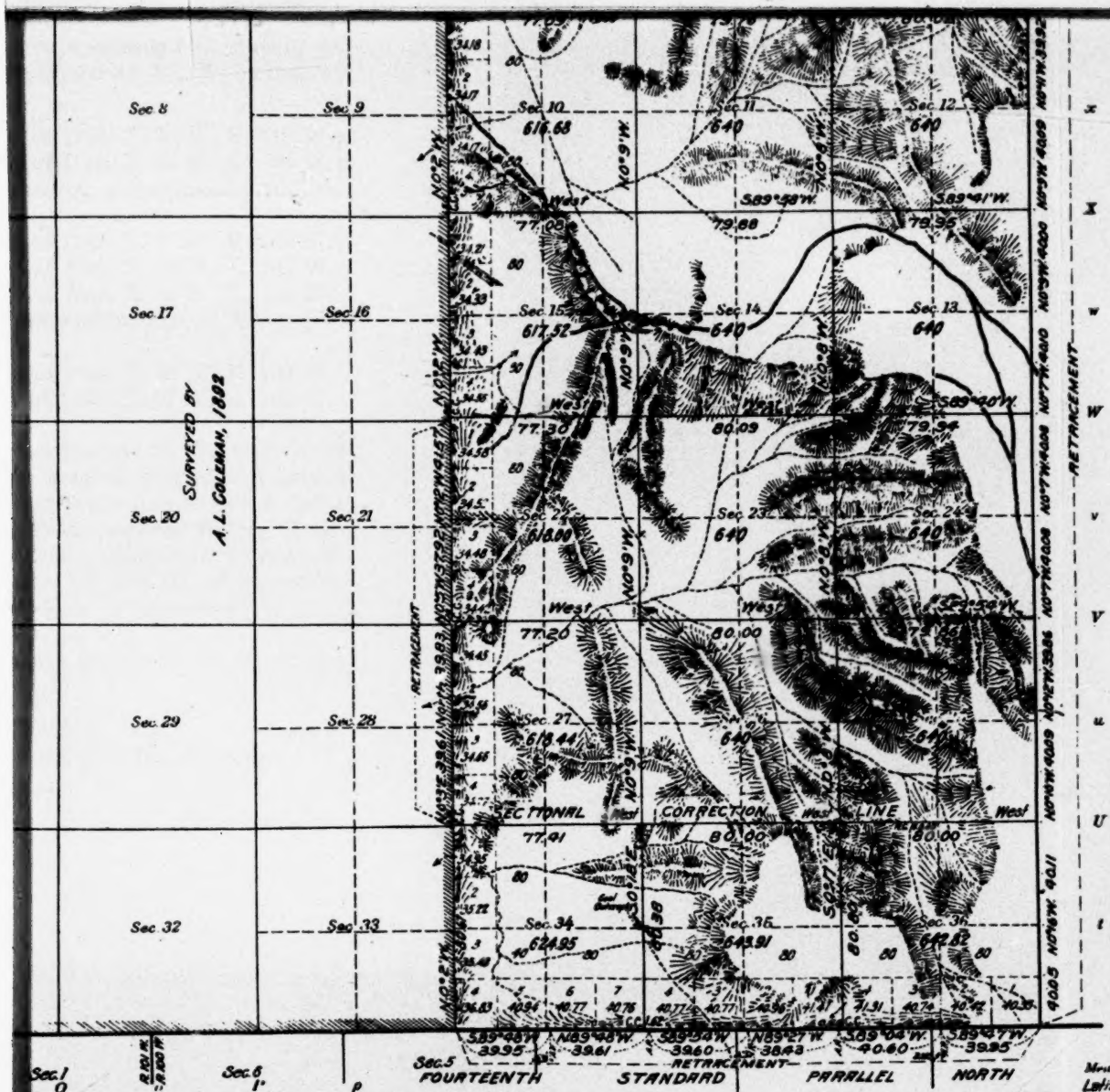
Fractional Township No. 57 North, Range No. 100 West of the Sixth Principal Meridian, Wyoming.

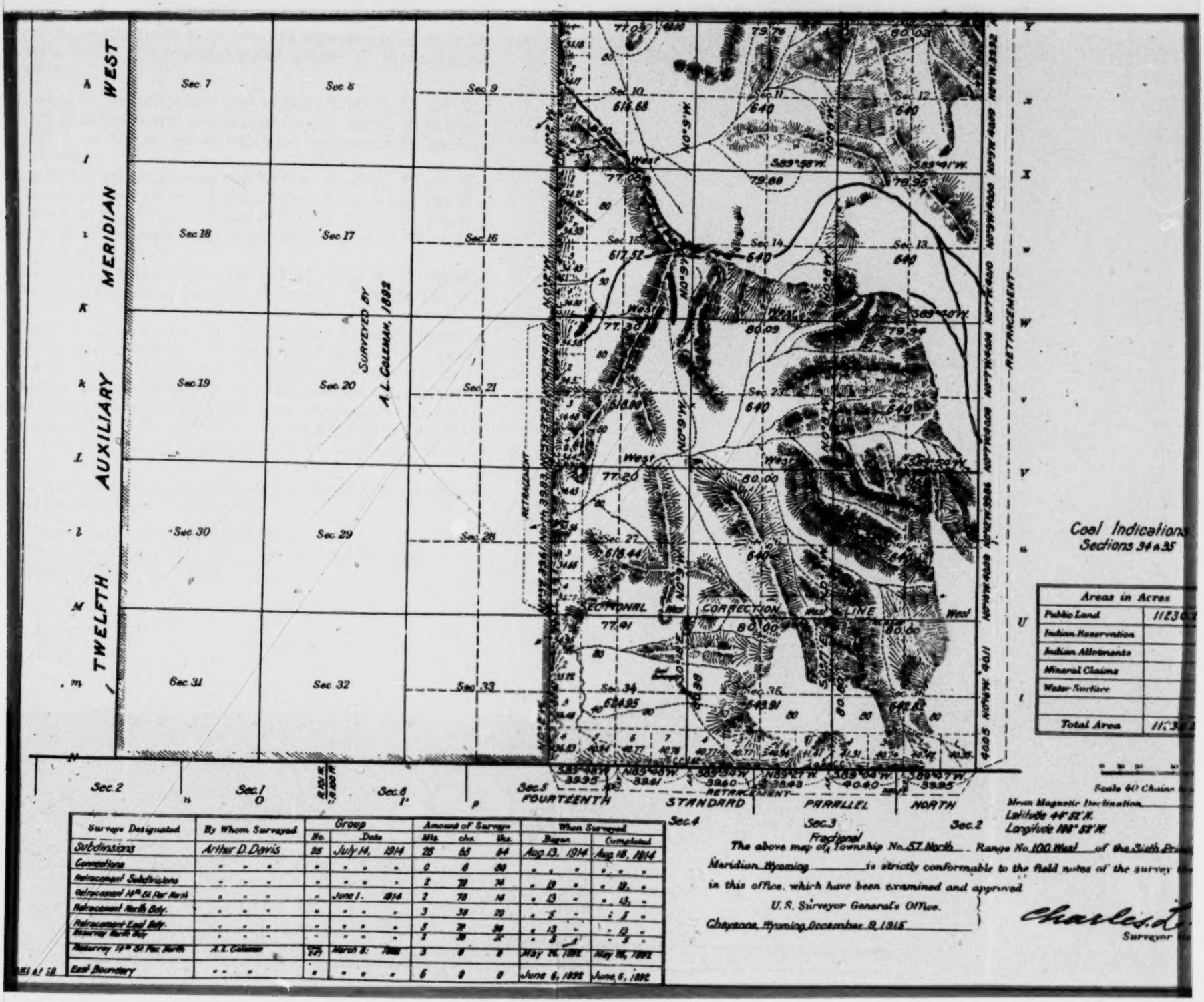


PLAINTIFF'S EXHIBIT 46

...nal Township No. 57 North, Range No. 100 West of the Sixth Principal Meridian, Wyoming.




Sec 8
Sec. 9
Sec. 10
Sec. 11
Sec. 12
Sec 17
Sec. 16
Sec. 15
Sec. 14
Sec. 13
Sec. 20
Sec. 21
Sec. 22
Sec. 23
Sec. 24
Sec. 29
Sec. 28
Sec. 27
Sec. 26
Sec. 25
Sec. 32
Sec. 33
Sec. 34
Sec. 35
Sec. 36
Sec. 1
Sec. 6
Sec. 5
Sec. 4
Sec. 3
Sec. 2
SURVEYED BY A.L. COLEMAN, 1892
RETRACEMENT
SECTIONAL CORRECTION LINE
FOURTEENTH STANDARD PARALLEL NORTH
RETRACEMENT
Fractional
N.0°12'W. 3983 links
N.0°12'W. 3995 links
N.0°12'W. 3960 links
N.0°12'W. 3843 links
N.0°12'W. 3995 links



Areas in Acres	
Public Land	1123[illegible]
Indian Reservation	
Indian Allotments	
Mineral Claims	
Water Surface	
Total Area	11[illegible]

Scale 40 Chains [illegible]

Mean Magnetic Inclination
Latitude 44° 32' N.
Longitude 108° 53' W

Surveys Designated	By Whom Surveyed	Group No.	Group Date	Amount of Surveys Mls.	Amount of Surveys chs.	Amount of Surveys lks.	When Surveyed Begun	When Surveyed Completed
Subdivisions	Arthur D. Davis	25	July 14, 1914	28	65	64	Aug. 13, 1914	Aug. 18, 1914
Connections	" " "	"	" " "	0	6	80	" " "	" " "
Retracement Subdivisions	" " "	"	" " "	2	78	74	" 19 "	" 19 "
Retracement 14th St. Par. North	" " "	"	June 1, 1914	2	78	14	" 13 "	" 13 "
Retracement North Bdy.	" " "	"	" " "	3	38	20	" 5 "	" 5 "
Retracement East Bdy.	" " "	"	" " "	5	21	26	" 13 "	" 13 "
Meaning North Bdy.	" " "	"	" " "	1	38	2[illegible]	" 3 "	" 3 "
Resurvey 14th St. Par. North	A. L. Coleman	24	March 5, 1892	3	0	0	May 14, 1892	May 18, 1892
East Boundary	" " "	"	" " "	6	0	0	June 6, 1892	June 6, 1892

The above map of Township No. 57 North, Range No. 100 West of the Sixth Principal Meridian Wyoming is strictly conformable to the field notes of the survey thereof in this office, which have been examined and approved

U. S. Surveyor General's Office.

Cheyenne, Wyoming, December 9, 1915

Surveyor General

[fol. 442] In Reply Please Refer to 434481 "E" OC

Department of the Interior
General Land Office
Washington

July 27, 1916.

Partial returns, Group 25, Wyoming, accepted.

U. S. Surveyor General, Cheyenne, Wyoming.

Sir:

I am in receipt of your letter of December 9, 1915, transmitting partial returns of surveys executed by Arthur D. Davis, U. S. Transitman, under group 25, Wyoming, as follows:

Book A of transcript and plat of frac. T. 30 N., R. 118 W.;
Book B of transcript and plat of frac. T. 34 N., R. 118 W.;
Book C of transcript of exteriors, retracements and resurveys;
Book D of transcript and plat of frac. T. 57 N., R. 103 W.;
Book E of transcript and plat of frac. T. 58 N., R. 103 W.;
Book F of transcript and plat of frac. T. 53 N., R. 104 W.;
Book G of transcript and supplemental plat of Tract 107, T. 52 N., R. 103 W.;
Book H of transcript and plat of frac. T. 58 N., R. 100 W.;
Book I of transcript and plat of frac. T. 57 N., R. 100 W.;

[fol. 443] Upon a careful examination of the returns of survey in connection with the special instructions issued and the explanations and directions given in letters E dated October 25 and November 18, 1915, relative thereto, it appears that all the surveys have been satisfactorily executed, except of Tract No. 107, T. 52 N., R. 103 W., as shown by the supplemental plat and book G of transcript of field notes.

The surveys as executed under group No. 25 are therefore hereby accepted as follows:

Frac. T's 30 and 34 N., R. 118 W.;
Frac. T's 57 and 58 N., R.'s 100 and 103 W., and
Frac. T. 34 N., R. 118 W.,

and the original plats thereof with photolithographic copies will be returned to you for further action as soon as the copies have been prepared.

The execution of survey of Tract No. 107, T. 52 N., R. 103 W., is not satisfactory and will be suspended for the present and made the subject of a separate letter, to follow soon.

[fols. 444-445] Surveys in other townships which are embraced in this group 25, are still pending in your office as follows:

T. 51 N., R. 103 W.;
T. 56 N., R. 97 W.;
T. 50 N., R. 98 W.;
T. 50 N., R. 99 W.;
T. 49 N., R. 103 W.;
T. 56 N., R. 102 W.;
T. 56 N., R. 103 W.

Very Respectfully, C. M. Bruce, Assistant Commissioner.

7-25-MIF.

[fol. 446] PLAINTIFF'S EXHIBIT 48

In Reply Please Refer to 434481 "E" OC

Department of the Interior
General Land Office
Washington

August 24, 1916.

Group 25 Wyoming. Transmitting original plats of accepted surveys and photolithographic copies thereof for further action.

U. S. Surveyor General, Cheyenne, Wyoming.

SIR:

Referring to letters "E", dated July 27, and 29, 1916, accepting surveys executed under Group 25 Wyoming, but retaining the plats thereof for photolithographing, I am now transmitting in separate package by registered mail for the files of your office the original plats, accompanied

by the usual unsigned photolithographic copies thereof for your signature and to be used in the usual manner as duplicate and triplicate plats, as follows:

T. 30 N., R. 118 W.
T. 34 N., R. 118 W.
T. 57 N., R. 103 W.
[fol. 447] T. 58 N., R. 103 W.
T. 53 N., R. 104 W.
Tract No. 107, T. 52 N., R. 103 W.
T. 58 N., R. 100 W.
T. 57 N., R. 100 W.

The filing of the triplicate plats in the proper local land office is hereby authorized.

Very respectfully, —— ——, Assistant Commissioner.

8-23-MK.

[fol. 448] PLAINTIFF'S EXHIBIT 49

Commissioner of Public Lands, 9:27
State of Wyoming, Oct. 4, '29

Rocky Mountain Pacific Oil Co. of Montana
303-307 Electric Building
Billings, Montana

October 2, 1929.

Charles T. Lupton.
Commissioner of State lands, Cheyenne, Wyo.

DEAR SIR:

Will you kindly advise us in regard to the holding by the State of Wyoming—Section 36, Township 58 N., Range 100 W.

It has come to our attention that a State Lease has been issued on the SE¼ of this section for oil and gas and that the United States has also issued a permit covering this land.

May we have this information at your earliest convenience?

Thanking you, I am,

Very truly yours, (S.) M. A. Shorts.

State of Wyoming

Office of Commissioner of Public Lands & Farm Loans

Cheyenne, Wyoming

October 4, 1929

Re: Sec. 36, T. 58 N., R. 100 W.

DEAR MR. SHORTS:

I am in receipt of your letter of October 2 in which you state that the United States government has issued a permit covering the SE¼ of the above described section and upon which the State of Wyoming has also issued an oil and gas prospecting lease.

This office is making an investigation of the matter. The records of this office show this to be a school section and as we have nothing on our records to indicate it was *known* mineral land prior to Statehood, or July 10, 1890, we believe that the permit was issued by the United States without authority.

Lease No. 40850 of Walter T. Ross covering the SE¼ Sec. 36, T. 58 N., R. 100 W will expire February 1, 1930.

C. M. Cox, Commissioner.

M. A. Shorts, Rocky Mountain Pacific Oil Company, 303-307 Electric Building, Billings, Montana.

[fol. 449] PLAINTIFF'S EXHIBIT 50

State of Wyoming

Office of Commissioner of Public Lands & Farm Loans

Cheyenne, Wyoming

October 4, 1929

GENTLEMEN:

Re: SE¼ Section 36, T. 58 N., R. 100 W.

Kindly advise me the status of the above described land and whether any permit has been issued thereon. If so, by what authority and to whom, as our records do not indicate the land in question to be mineral prior to Statehood.

Your early attention and advice in the matter will be appreciated. A copy of the letter to the U. S. Land Office, Cheyenne, Wyoming, is enclosed.

General Land Office, Washington, D. C.

C. M. Cox, Commissioner. WSK

PAP Follow up Oct. 20, 1929

October 4, 1929

GENTLEMEN:

Re: SE¼ Section 36, T. 58 N., R. 100 W.

The above described land is held under lease from the State of Wyoming by Walter T. Rose until February 1, 1930 for oil and gas prospecting purposes.

We are today in receipt of advice that the United States Government has issued a permit covering this land.

Will you kindly advise me the status of this land and whether any permit has been issued thereon. If so, by what authority and to whom, as our records do not indicate the land in question to be mineral prior to Statehood, and it would appear to be an error on the part of the U. S. Land Office if a permit has been issued on it.

United States Land Office, Federal Building, Cheyenne, Wyoming.

C. M. Cox, Commissioner. WSK.

PAP.

[fol. 450] PLAINTIFF'S EXHIBIT 51

Am. Recd. Commissioner of Public Lands. 9:40. State of Wyoming, Oct. 9, 29.

United States Department of the Interior

General Land Office,

U. S. Land Office

Cheyenne, Wyo.

Oct. 8, 1929.

Commissioner of Public Lands, Cheyenne, Wyo.

SIR:

Replying to your favor of the 4th inst., you are advised the records of this office show that Permit 045175, issued Feb. 25, 1928, to R. W. Bennett, Upham, N. D. covering W½NE¼; N½SE¼; SE¼SE¼ Sec. 23; W½NW¼; SE¼NW¼; SW¼; W½SE¼ Sec. 25; W½ NE¼; *SE¼ Sec. 36,* T. 58 N. R. 100 W. 6th P.M. Extension granted to June 30, 1929.

On Feb. 19, 1929, permit 047383, of Edith Merrill, was issued, covering Lots 3, 4, S½NW¼; SW¼; SW¼SE¼ Sec. 23; E½ Sec. 26; *W½ Sec. 36, T. 58 N., R. 100 W.* All Sec. 1; NE¼NE¼ Sec. 11; N½NE¼; SE¼NE¼ Sec. 13, T. 57 N., R. 100 W. 6th P.M. Permit intact.

Yours truly, (S.) M. T. Christensen, Register.

Bridger, Mr. N. Feb. 19, 1929.

Oct. 17, 1929.

Called U. S. Land Office, Cheyenne, Wyo., who corroborated information given in letter of Oct. 8. When asked about E½NE¼ Sec. 36-58-100 advised E½ NE¼ cannot be leased as it is known as "Oil Structure." Therefore no permits can be granted thereon." MM B 1 MM B 2 MM B B MM B B

EFS.

[fol. 451] PLAINTIFF'S EXHIBIT 52

Western Union

Telegram

October 9, 1929.

Commissioner General Land Office, Washington, D. C.

Our records show state of Wyoming owns entire rights in section thirty-six township fifty-eight range one hundred stop United States Land Office advises part included in permits naught forty-five one seventy-five and naught forty-seven three eighty-three stop Is error made by land office in issuing permits stop Wire answer.

C. M. Cox, Commissioner.

Prepaid—Charge Commissioner of Public Lands.

[fol. 452] PLAINTIFF'S EXHIBIT 53

October 12, 1929.

Very Special—part of the land under an operating oil and gas lease—NE¼ Sec. 36-58-100—N.L. Battenschlag—has been operating since October 15, 1917.

Land also leased for grazing.

Immediate attention should be given the matter to determine if any action can be taken to protect the State's valuable holding.

The first notice we had on the matter was when—WSK.

Western Union

1929 Oct. 11 PM 4 22.

4241 47 NL Collect 2 Extra-Washington DC II

C. M. Cox, Commissioner, Cheyenne, Wyo.

Your Wire Tenth Section Thirty Six Fifty Eight North One Hundred West in Petroleum Reserve Created December Six Nineteen Fifteen Prior to Acceptance Township Plat July Twenty Seven Nineteen Sixteen Stop Title Not in State See Six Federal Reporter Second Page Six Seventy Five—Havell, Acting Commissioner.

Am. Rec'd. Commissioner Public Lands, 9:20. State of Wyoming, Oct. 12, 29.

N. L. Battenschlag
NE¼ 36-58-100

	.00
1915	100.00
6	100.00
7	127.23
8	1,171.77
9	2,107.18
1920	2,190.27
1	964.66
2	920.15
3	730.76
4	850.06
5	1,063.29
6	1,281.59
7	592.10
8	536.34
(Jan.-July) 1929	319.63
	13,055.03

Revenue received from Battenschlag lease.

[fol. 453] PLAINTIFF'S EXHIBIT 55

Am. Rec'd. Commissioner of Public Lands, 10:04. State of Wyoming, Nov. 20, 29.

The Ohio Oil Co., Casper, Wyoming

Nov. 19, 1929.

Land Department, A. Baker.

Mr. C. M. Cox, Commissioner of Public Lands, Cheyenne, Wyo.

DEAR SIR:

I enclose an article, which I clipped out of the "Wyoming Eagle", regarding Sec. 36, T. 58 N., R. 100 W., which is covered by the oil and gas operating lease from the State to N. L. Battenschlag, operated by The Ohio Oil Company.

I wonder if the Government has raised any question regarding the title of the State to this land? If so, I wish you would advise me fully as to the situation.

Yours truly, (S.) A. Baker, Assistant Secretary.

AB:ECL.
Enc.

"State" Oil Land, Long Payer of Royalties to Wyoming, Is Now Claimed By Government

Elk Basin Section To Which State Has Assumed Title And Leased To Ohio Oil Co., Is Federal Property, Says Claim

Whether Uncle Sam can now step to the front and take from the state of Wyoming a section of rich oil land in the Elk Basin, Wyoming, field, which for years has been considered property of this state and which has been leased by the Wyoming state land board to the Ohio Oil Company for some time, is a question that must soon be decided.

The land in question is Section 36, Township 58, Range 100.

Under federal law public land states are given sections 16 and 36 in each township except where the land at the time of the survey is known to be mineral land. For some time prior to the survey of this land the state claimed title to the land and since then and since the survey was made the state has leased it as oil land and has received some $13,000 in royalties, there being three producing wells on the section at this time. Though the government has had evidence since the time of survey to show that it was mineral land, it did not acquaint itself with the fact and has never said anything about it to the state.

Recently, however, an individual obtained a prospector's permit on the land from the federal government and then when it was brought out that the state had itself assumed title and had leased the land for mineral purposes, the government for the first time became aware of the situation. What steps Uncle Sam will now take to recover title to the section and what if any steps he will take to recover any royalties from the state or to secure compensation from the operator remains to be seen, but the case promises to be one of unusual interest. The value of the oil that has been produced on the section is said to run well into six figures.

[fol. 454] PLAINTIFF'S EXHIBIT 56

Cash or Chg.
Pd.

Time filed
10 45 A.M.

Western Union Telegram

Cheyenne, Wyo.
Nov. 20, 1929.

A. Baker
% Ohio Oil Company
Casper, Wyoming

Mister Cox familiar with Elk Basin Section Thirty-six situation. Suggest you talk matter over with him.

W. S. Kienzle, Deputy Commissioner.

WU:PD
EFS

Charge: State Land Office.

December 2, 1929.

The Ohio Oil Company
Casper, Wyoming.

Attention: Mr. A. Baker, Assistant Secretary

Dear Mr. Baker:

RE: Land in Sec. 36, T. 58 N., R. 100 W.

I am closing a copy of a letter and a telegram received from the Department of the Interior relative to Section 36, T. 58 N., R. 100 W.

These two communications contain all the information we have in connection with the section involved.

To the best of our knowledge and information the Government itself has never questioned our right to this section by any Act.

After considering this matter I shall be glad to have your opinion as to what should be done in the matter.

Yours very truly, C. M. Cox, Commissioner.

CMC:EFS

[fol. 455] PLAINTIFF'S EXHIBIT 57

AM Recd. Commissioner of Public Lands, 10:24, State of Wyoming, Dec. 2, 29.

The Ohio Oil Co., Casper, Wyoming

Nov. 30, 1929.

Land Department, A. Baker.

Mr. C. M. Cox, Commissioner of Public Lands, Cheyenne, Wyo.

DEAR SIR:

Mr. Christensen, the Register at Cheyenne, seems to think that you have a letter from the Commissioner of the General Land Office regarding permit 047383, which was apparently issued to embrace the W½ of Sec. 36, T. 58 N., R. 100 W., which land is embraced in the oil and gas operating lease of N. L. Battenschlag, operated by The Ohio Oil Company.

As stated in my letter of Nov. 19th, we would like to be advised as to what reason the Government gives for attempting to issue a permit on this land, apparently included in the congressional grant to the State, for school purposes.

It is needless to say that if any question regarding the title to this land is raised, the State may expect to receive all the cooperation and assistance possible for The Ohio Oil Company to furnish. Any information or correspondence between us can be held as strictly confidential, if that seems advisable or if you think it is best.

Yours truly, (S.) A. Baker, Assistant Secretary.

AB:ECL

[fol. 456] PLAINTIFF'S EXHIBIT 58

Commissioner of Public Lands, 9:42, State of Wyoming, Dec. 5, '29.
Land Department, A. Baker.

The Ohio Oil Co., Casper Wyoming

Dec. 4, 1929.

Mr. C. M. Cox, Commissioner of Public Lands, Cheyenne, Wyoming.

DEAR SIR:

Replying to your letter of Dec. 2, 1929, regarding Sec. 36, T. 58 N., R. 100 W., as a preliminary inquiry, I am asking the United States Public Survey Office to furnish me definite information as to the date of the original survey of this township and the approval thereof, and any subsequent resurvey and approval thereof. I have done this because I notice in the Commissioner's letter, copy of which you sent me, he states the plat of survey of this township was accepted July 27, 1916. It seems inconceivable to me that there was no survey of this township prior to that time, but, of course, it might have been a late survey, or might have been surveyed at an earlier date and approval withheld, for some reason.

I notice another thing, and that is, in the permits which have been granted on this section, Cheyenne Serial 045175, and Cheyenne Serial 047383, the E½ NE¼, on which the wells are located, and which, in all probability, is all of the land in this section productive of oil and gas, is not included.

I will let you know what I ascertain regarding the survey situation, in case you do not already have this information.

Yours truly, (S.) A. Baker, Assistant Secretary.

December 6, 1929.

RE: All Sec. 36, T. 58 N., R. 100 W.

DEAR MR. BAKER:

Your letter of December 4th with reference to the above noted section has been received.

I shall be glad to have you advise me what you ascertain regarding the survey situation, as I have no definite in-

formation regarding it, except as outlined in my letter of Dec. 2, 1929.

C. M. Cox, Commissioner. WSK.

Mr. A. Baker, Land Department, The Ohio Oil Company, Casper, Wyoming.

[fol. 457] PLAINTIFF'S EXHIBIT 59

Recd. Commissioner of Public Lands, 10:07 A.M., State of Wyoming, Dec. 11, '29.

The Ohio Oil Co., Casper, Wyoming

Land Department, A. Baker.

Dec. 10, 1929.

Mr. C. M. Cox, Commissioner of Public Lands, Cheyenne, Wyo.

DEAR SIR:

Replying to your letter of Dec. 6th, regarding the title of the State to Sec. 36, T. 58 N., R. 100 W under its congressional grant for the support of common schools, my understanding of the decisions both of the Interior Department and of the United States courts, is that they are to the effect the title passes to the State on the date of the admission of the State, if the land is surveyed, or if unsurveyed, on the date of the approval of the plat of survey. It might be well to ascertain, in a preliminary way, from Mr. W. O. Wilson, the Attorney General, whether this understanding as to the holdings of the Interior Department and the courts is correct.

Examining the facts in this case, in a preliminary way, it appears that the survey of this township was executed by United States Surveyor Davis, in August 1914, was approved by the Surveyor General Dec. 9, 1915, and was accepted by the Commissoiner of the General Land Office, July 27, 1916. I do not, as yet, have the date that this plat was filed in the local United States Land Office. It might be well to seek Mr. Wilson's advice as to which of these dates is the controlling date on which the title passes, if the lands are not known to be mineral in character, the

date of survey, date of approval by the Surveyor General, date of acceptance by the Commissioner, or date of filing in the local Land Office?

An examination of the files of this company, which carried on the exploration work on this land for oil and gas, shows that the first exploration work was commenced July 24, 1917, the date of the commencement of the No. 1 Well, which, it will be observed, is almost one year after the approval of the plat of survey by the Commissioner, and that this well was completed Sept. 7, 1917, with an oil production of 40 bbls. the first 24 hours, and 30 bbls. the second 24 hours. It would seem that this being the first exploration work and the first well drilled on the land, it would hardly be possible for the Government to sustain the position that the land was known mineral land on the date of the acceptance of the survey, July 27, 1916.

In carrying on your inquiry, I think we should have a copy of the plat of survey of this township 58 N., R. 100 W., and the field notes, with certificate from the Register of the Land Office, showing the date that the plat was filed in that office, which date may become material. If agreeable to you, I will go ahead and secure these papers, and I can have photostat copies made for you and for Mr. Wilson's office.

There is one thing that occurs to me on which we should inform ourselves, and that is, any prospector's leases which the State might have issued prior to July 27, 1916. Will you please have your records examined and furnish me a list of any prospector's leases issued by the State on this section prior to that date, giving number and date, and name of lessee, and description of land, and what disposition was made of the lease, that is, whether it was canceled by termination, etc.

It seems to me it might be well to have a talk with Attorney General Wilson regarding this situation, in a preliminary way. I am therefore enclosing a copy of this letter, in case you wish to furnish it to Mr. Wilson, and the subsequent data which I gather together I will furnish to you in duplicate, so that a copy will be available for his office, if desired.

Yours truly, (S.) A. Baker, Assistant Secretary.

[fol. 458] PLAINTIFF'S EXHIBIT 60

January 16, 1930.

Honorable W. O. Wilson, Attorney General, State of Wyoming, Cheyenne, Wyoming

DEAR MR. WILSON:

Re: Section 36, T. 58 N., R. 100 W. Elk Basin Field

I am enclosing certain correspondence and facts pertaining to the foregoing section which, prior to October 11, 1929, this office considered to be state-owned land.

From the papers enclosed it will be noted that considerable doubt exists whether or not the State acquired title to this section due to the fact that before the plat of survey was approved by the Department the land was withdrawn and included in a United States Government Petroleum Reserve.

A decision which seems to be in point is transmitted herewith. You will kindly examine into this matter and advise this office in due course whether or not in your opinion the State acquired title to said section under the Enabling Act.

The State has received as royalty from this land approximately $13,000.00 which has been covered into the permanent school funds.

Yours very truly, C. M. Cox, Commissioner.

CMC:EFS.
Enc.

January 16, 1930.

The Ohio Oil Company, Casper, Wyoming.

Attention: A. Baker, Asst. Secretary

DEAR MR. BAKER:

Re: Section 36, T. 58 N., R. 100 W.

I am enclosing a copy of our Mineral Lease record on the above described land.

In your letter of December 10, 1929 you mention you would like to have this information. The other matters

referred to in your letter, I believe, were discussed when you called at this office some time ago.

The question as to the title of this section has been submitted to the Attorney General for an opinion and I shall be glad to furnish a copy thereof to you when it is received.

Yours very truly, C. M. Cox, Commissioner.

CMC:EFS.
Enc. 1.

[fol. 459] PLAINTIFF'S EXHIBIT 61

A.M. Recd. Commissioner of Public Lands. 9:20. State of Wyoming, Jan. 29, 30.

The Ohio Oil Co.,

Casper, Wyoming

Land Department, A. Baker.

Jan. 28, 1930.

Mr. C. M. Cox, Commissioner of Public Lands, Cheyenne, Wyo.

DEAR SIR:

Regarding the question of the title of the State to Sec. 36, T. 58 N., R. 100 W., as I agreed to do, I enclose copy of my Title Memorandum with exhibits, addressed to our General Counsel, Mr. M. N. Poe.

In accordance with the offer contained in your letter of Jan. 16th, when Attorney General Wilson has rendered his opinion on this title, I would like to receive a copy for our consideration, and in order that I may forward it to Mr. Poe.

It seems to me, personally, that the title to the State has failed, in this instance, unless, of course, I have overlooked something important along the line, and that the only relief we can hope for would be by special legislation by Congress.

Yours truly, (S.) A. Baker, Assistant Secretary.

AB:ECL.
Enc.

EFS—Hold for M. Cox and if he has no information, he wishes to pass on to the Baker act rect. of it and state not

yet heard from the Atty. General. Will advise when we do hear.

[fol. 460] Am. Recd. Commissioner of Public Lands. 9:20. State of Wyoming, Jan. 29, 30.

The Ohio Oil Company

Casper, Wyoming

Land Department, A. Baker

Jan. 28, 1930.

Title Memorandum and Schedule of Papers

Mr. M. N. Poe, General Counsel. The Ohio Oil Co., Findlay, Ohio.

Dear Sir:

The following report is submitted on the title situation with respect to the NE¼ Sec. 36, T. 58 N., R. 100 W., embraced in oil and gas lease No. 40091, dated Oct. 2, 1927, from the State of Wyoming to N. L. Battenschlag, and expiring Oct. 1, 1932:

The above section is included in the Congressional Grant to the State of Wyoming of two sections in each township, Sections 16 and 36, for the support of the common schools of the State.

Bearing on the title of the State, the following exhibits are attached:

A-1. Copy of application for oil and gas prospecting permit of Edith Merrill, Cheyenne, Wyo., Serial 047383, filed June 8, 19[illegible] which includes, among other lands, the W½ Sec. 36, [illegible] N., R. 100 W., and in which application it is stated that the land described therein is not within any known geologic structure of a producing oil or gas field.

A-2. Copy of letter dated Aug. 18, 1928, from the Acting Director of the U. S. Geological Survey to the Commissioner of the General Land Office, which refers to the application for permit "A-1" and the land embraced therein, including the W½ Sec. 36, and states that the lands involved in the application are not within the known geologic structure of a producing oil and gas field.

A-3. Memorandum dated Feb. 11, 1929, and attached to the file in connection with oil and gas prospecting permit

application 047383, which is to the effect that the survey of fractional T. 58 N., R. 100 W., including the W½ Sec. 36, was approved July 17, 1916, and that the rights of the State under its grant of July 10, 1890, would have attached on that date, except for the fact that on July 27, 1916, the land was embraced in Petroleum Reserve No. 41, Executive Order Dec. 6, 1915, and which memorandum concludes with the statement that title to the W½ Sec. 36, did not vest in the State and that said land is public land of the United States.

[fol. 461] A-4. Copy of oil and gas prospecting permit Cheyenne 047383, dated Feb. 19, 1929, to Edith Merrill, which embraces W½ Sec. 36, T. 58 N., R. 100 W.

A-5. Copy of telegram dated Oct. 11, 1929, from the Acting Commissioner of the General Land Office to the Commissioner of Public Lands for Wyoming, stating that the title to Sec. 36, T. 58 N., R. 100 W., is not in the State. .

B-1. Copy of application for oil and gas prospecting permit of R. W. Bennett, Lander Serial 015134, filed Aug. 24, 1926, which application includes, among other lands, the W½NE¼ and SE¼ Sec. 36, T. 58 N., R. 100 W.

B-2. Copy of letter dated Feb. 18, 1928, from Director U. S. Geological Survey to Commissioner of the General Land Office, which refers to the application for permit now Cheyenne Serial 045175, and to the land therein, including W½NE¼ and SE¼ Sec. 36, and states that the lands involved in the application are not within the known geologic structure of a producing oil or gas field.

B-3. Copy of oil and gas prospecting permit Cheyenne 045175 dated Feb. 23, 1928, to R. W. Bennett, which includes, among other lands, W½NE¼ and SE¼ Sec. 36, T. 58 N., R. 100 W.

B-4. Copy of letter dated Oct. 4, 1929, from the Commissioner of Public Lands for Wyoming to the U. S. Land Office, Cheyenne, Wyo., advising that the Commissioner has been advised of the issuance of a permit on the SE¼ Sec. 36, T. 58 N., R. 100 W., and asking if such a permit has been issued. If so, by what authority and to whom.

B-5. Copy of letter dated Oct. 4, 1929, from the Commissioner of Public Lands to General Land Office, which inquiry is to the same effect as the one made of the local land Office." "B-4."

B-6. Copy of telegram, dated Oct. 9, 1929, from C. M. Cox, Wyoming Commissioner of Public Lands, to Commissioner

of the General Land Office, stating that U. S. Land Office advises part of Sec. 36, T. 58 N., R. 100 W. included in permits 045175 and 047383, and asking if error had not been made in issuing these permits.

B-7. Copy of telegram, dated Oct. 11, 1929, from Acting Commissioner of the General Land Office to C. M. Cox, Wyoming Commissioner of Public Lands, stating that Sec. 36, T. 58 N., R. 100 W., is in Petroleum Reserve created Dec. 6, 1915, prior to acceptance of township plat July 27, 1916, and that title is not in the State.

B-8. Copy of letter dated Oct. 7, 1929, from Rocky Mountain Pacific Oil Co. to Commissioner of the General Land Office, which refers to permit 045175, and inquires as to the status of the W½NE¼ and SE¼ Sec. 36, T. 58 N., R. 100 W. embraced therein.

[fol. 462] B-9. Copy of letter dated Nov. 1, 1929, from the Acting Commissioner of the General Land Office to Rocky Mountain Pacific Oil Co., in which it is stated that Sec. 36, T. 58 N., R. 100 W., is within petroleum reserve created by executive order of Dec. 6, 1915, and that plat of survey of this township was accepted July 27, 1916, and that title therefore to this section has not vested in the State.

B-10. Copy of letter dated Oct. 31, 1929, from the Acting Commissioner of the General Land Office to Mr. Herbert Stokes, President of the Rocky Mountain Pacific Oil Co., which refers to his letter of Oct. 7, 1929, relative to W½NE¼ and SE¼ Sec. 36, T. 58 N., R. 100 W., and again advises that these tracts are within Petroleum Reserve created by Executive Order of Dec. 6, 1915; that the plat of survey of the township was accepted July 27, 1916, subsequent to the date of the withdrawal, and title, therefore, has not vested in the State.

C. Photostat copy of the original plat of survey of T. 58 N., R. 100 W., as filed in the U. S. Land Office, Lander, Wyo., Oct. 2, 1916, on which is endorsed classification by the U. S. Geological Survey, dated March 9, 1910, of all Sec. 36, excepting the SW¼SW¼, as coal land, and also on which is indorsed Petroleum Reserve No. 41, Wyoming No. 16, Executive Order of Dec. 6, 1915.

C-1. Certificate dated Dec. 14, 1929, by Register U. S. Land Office, Cheyenne, Wyo., as to the plat "C" being a true copy of the original plat filed.

D. Copy of letter dated Jan. 16, 1930, from the Commissioner of Public Lands for Wyoming to The Ohio Oil Co.,

transmitting a copy of the minerals record in that office, on Sec. 36, T. 58 N., R. 100 W., and advising that the question of title to this section has been submitted to the Attorney General for the State, for an opinion, and that he will furnish a copy of that opinion when received.

D-1. Copy of mineral lease record referred to by the Commissioner in his letter "D".

The records and files of the Casper office of The Ohio Oil Co. show the following prospector's and operator's leases from the State of Wyoming in which The Ohio Oil Co. has been interested, as the operating company:

Prospector's Leases

Nov. 11, 1916 to J. R. Penn, Jr., Assigned to D. L. Kagy, All 36-58-100.

Operator's Leases

Lease 23629 D. L. Kagy, All 36-58-100. Dated 10-3-1917. Assigned to N. L. Battenschlag. Expired Oct. 3, 1922.
[fol. 463] Lease 31853. N. L. Battenschlag. NE¼ 36-58-100. Dated Oct. 3, 1922. Expired Oct. 3, 1927.
Lease 40091. N. L. Battenschlag. NE¼ 36-58-100. Dated Oct. 2, 1927. Expires Oct. 1, 1932.

It will be observed from the foregoing that the two permit applications allowed for portions of Sec. 36, T. 58 N., R. 100 W., did not include the E½NE¼ Sec. 36, on which the oil wells completed by the Ohio Oil Company, as operator, are located. Permit and application for permit 045175 includes W½NE¼ of said section. Why neither of these applications for permit included the 80 acres on which the wells are located, E½NE¼ Sec. 36, can only be conjectured, but the reason for this may be that the applicants did not consider they could make the showing with respect to this 80 acres, that it was not within the known geologic structure of a producing oil or gas field.

The foregoing memorandum and attached exhibits indicate that in all probability the title to Sec. 36, T. 58 N., R. 100 W., including the NE¼, on which producing oil wells have been completed by The Ohio Oil Co., as operator on the E½NE¼ and royalties on production have been paid the State, did not vest in the State.

If the opinion of the Attorney General for the State, when rendered, is to this effect, I would recommend that

the officials of the State and The Ohio Oil Co. cooperate in an effort to secure the introduction and passage of legislation which will authorize the issuance of a patent to the State for the land on which the wells and improvements are located, E½NE¼, Sec. 36, or if that is impossible, authorizing a lease to the State and The Ohio Oil Co., jointly.

Respectfully submitted, (S.) A. Baker, Assistant Secretary.

AB:ECL.

[fol. 464]. PLAINTIFF'S EXHIBIT 62

February 3, 1930.

Hon. F. C. Emerson, Governor of Wyoming, c/o Willard Hotel, Washington, D. C.

DEAR GOVERNOR EMERSON:

Re: All Sec. 36, T. 58 N., R. 100 W. Elk Basin Field, Park County.

You will recall my advising you some time ago about the State's title to the above noted section located in Park County.

To refresh your memory, this section for many years past was supposed to belong to the State of Wyoming and since October 1915 has been under constant Oil and Gas lease by the State to various persons. During that time the lease controlled by The Ohio Oil Company on the NE¼ of said section has produced approximately $13,000.00 in royalties to the State. It now appears that there is a serious doubt whether or not the State acquired title to the land under its school land grant for the reason that the land was not surveyed, or at least the survey was not approved by the proper Government officials, until July 17, 1916. On July 27, 1916, or ten days after the approval of the survey, the land was embraced in Petroleum Reserve 41 created by Executive Order of December 6, 1915. The general rule of law seems to be that where land was known to be mineral in character prior to the date of the approval of the survey the title did not vest in the State under its grant of July 10, 1890.

In this case the Department has so ruled and to the best of our knowledge and belief at the present time, based upon decisions of both, the Department of the Interior and the Courts, we are under the firm belief that the title to this tract of land did not pass to the State of Wyoming under the grand aforesaid. It, therefore, follows that the State is facing an embarrassing situation in that it has leased the land for many years, has collected the royalties and covered it into the permanent school funds of the State. So far as I know no attempt has ever been made by the Government to dispute the possession of the property or in any manner recover the royalty collected by the State. In fact, the question itself creates a complex situation in that at the time the State leased the land to The Ohio Oil Company it would have been necessary for anyone desiring the land from the Government to have filed placer claim location and procured title in that manner. The leasing law became effective and applicable February 25, 1920.

It is true that the lessee for The Ohio Oil Company may have, upon gaining knowledge of the circumstances, asserted preference claim under the Leasing Act and secured preference right to a lease upon the land. It so happens, however, that The Ohio Oil Company did not know of the discrepancy in the title until they were advised by this office this last fall.

[fol. 465] I am advising you of this situation at this time in order that while you are in Washington you may take the matter up with the officials of the Department of the Interior and if possible find out their future attitude. Also, if it is thought best that the State should endeavor to acquire title, to proceed through our representative in Congress, as a special legislative Act will be necessary to vest title in the State.

Personally I think that such a request is not unreasonable and believe if the matter were taken up carefully the Interior officials could be convinced of the merit of our claim. There is one matter, however, that you will find in conflict, and that is certain Oil and Gas Prospecting Permits that are now outstanding against the remainder of the section. For that matter the State might waive its claim to the land in conflict and take title only to the producing area which as I recall is limited to the E½NE¼ of said Section.

If we do not endeavor to secure title eventually there is going to be trouble and it will be necessary for the State

to make settlement with someone for the funds secured under its leases. It would seem to me that if early action is had, especially with a friendly administration, better results will be obtained. I suggest that you look into the matter carefully and endeavor to arrive at some solution of the question while there.

With kind regards and best wishes for a successful trip, I remain,

Yours very truly, C. M. Cox, Commissioner.

CMC:EFS.

[fol. 466] PLAINTIFF'S EXHIBIT 63

WJH, CAS.

Address only The Commissioner of the General Land Office, Inc.

United States Department of the Interior,
General Land Office,
Washington

February 10, 1930.

RCP

In Reply Please Refer to "F" RCP 1367348.

As to Sec. 36, T. 58 N., R. 100 W. Elk Basin Field

Hon. F. C. Emerson, Governor of Wyoming, Cheyenne, Wyoming.

My dear Governor:

Reference is had to a letter addressed to you under date of February 3, 1930, from the Commissioner of Public Lands of the State of Wyoming, in regard to Sec. 36, T. 58 N., R. 100 W., 6th P. M., by which letter it is shown that oil and gas leases have been issued by the State for certain lands in said section.

It is found that plat of survey of this fractional township, including Sec. 36, was approved December 9, 1915, and accepted by this office on July 27, 1916, upon which date the school land grant to the State made by the act of July 10, 1890 (26 Stat. 222) would become effective if the land were of the character and status granted (240 U. S. 192).

This township was embraced in various withdrawals under the coal land laws, and part of Sec. 36 was classified as coal land at $20 per acre, and part at $25 per acre, on March 12, 1910.

All of Sec. 36 was embraced in Petroleum Reserve No. 41 by Executive order of December 6, 1915, which prevented the title from passing to the State upon the acceptance of the survey. See case of State of Utah v. Lichliter et al. (50 L. D. 231) and Supreme Court decisions cited therein. See, also, 6 Fed. (2nd) 675 and 273 U. S. 649.

The E½ NE¼ said Sec. 36 was defined December 16, 1924 as within the known geologic structure of Elk Basin Oil Field.

[fol. 467] The W½ NE¼ and SE¼ of said Section are embraced in oil and gas prospecting permit No. 045175, issued February 25, 1928 to R. W. Bennett, under the act of February 25, 1920 (41 Stat. 437). Oil and gas prospecting permit No. 047383, embracing the W½ of the section was issued February 19, 1929, to Edith Merrill, but this permit was canceled December 14, 1929.

Attention is respectfully invited to the case of *United States* v. *Sweet* (245 U. S. 563), wherein the State

"F" RCP 1367348

of Utah had sold school section land where there had been doubt as to the grant of mineral lands, and in that case the court denied the claim of title based on the transfer by the State.

In the present instance, the State had been clearly put upon notice as to the mineral character of the land by the withdrawals and classifications mentioned, and in the absence of proof, the burden of which would be upon the State, that the land is not valuable for oil, gas or other minerals, the State could acquire no title.

The withdrawal for petroleum reserve excludes the land from the grant of mineral lands made by the act of January 25, 1927 (44 Stat. 1026). See 52 L. D. 51.

Very respectfully, (S.) C. C. Moore, Commissioner.

2/8 eag.

[fol. 468] PLAINTIFF'S EXHIBIT 64

February 19, 1930.

Hon. Patrick J. Sullivan, United States Senate, Washington, D. C.

RE: All Sec. 36, T. 58 N., R. 100 W Elk Basin Field, Wyoming

DEAR SENATOR:

I enclose a letter from this office to the Honorable F. C. Emerson, Governor, of Wyoming, dated February 3, 1930 addressed to him at Washington, D. C. which letter is self explanatory. Also enclosed is a copy of a reply to this letter by the Commissioner of the General Land Office.

In brief, it appears that the State did not acquire title to Section 36, T. 58 N., R. 100 W., yet we have leased the land for about fifteen years and secured oil royalty therefrom amounting to $13,019.38 which has been covered into the Permanent fund. The production from the land at this time is very small and will probably continue to diminish. Under the conditions as they exist at this time there is a question as to the State's right to the royalty received, although the State proceeded in good faith and knew nothing about the discrepancy in the title until last fall. Under such conditions it would seem to be only equitable and just that the Government, by a Special Act of Congress, grant to the State the title to the land from which the oil has been produced, thereby confirming the action of the State in leasing the land.

I suggest that you confer with Mr. Carter and proceed to draw up and introduce the necessary Bills in both houses of Congress, the purpose of which will be to vest the title to the E½ NE¼ Sec. 36, T. 58 N., R. 100 W., in the State of Wyoming. The balance of the land is under prospecting permits issued by the Department of the Interior and any effort to secure title to the remaining part of the section would necessarily conflict with the outstanding oil and gas permits. This we do not desire to do as the land is worthless for grazing purposes and of extremely doubtful value for mineral purposes.

A plat showing the location of the wells and the area we desire to have the Government cede to the State, is enclosed.

Your prompt attention to this matter will be appreciated and such further information as you may desire will be furnished upon request.

I feel confident if you can secure the consent of the Departmental officials you will have no difficulty in putting the bills through Congress.

So far the Government has made no effort to dispute our right to lease the land or demand the royalty received, although they have evidently been cognizant of the defect in the State's title for a long time.

Yours very truly, C. M. Cox, Commissioner.

CMC:EFS.

Record of Telephone Call

Date: Feb. 19, 1930.

Name: C. M. Cox called A. Baker, Casper, Wyoming.

RE:NE¼ Sec. 36-58-100. Baker informed him that all they were interested in retaining was the portion of the NE¼ on which the wells were located. E½ NE¼. See letter to Hon. Sen. Patrick J. Sullivan.

Eleanore F. Schuelke.

five

[fol. 469] PLAINTIFF'S EXHIBIT 65

United States Senate, Committee on Military Affairs

Recd. 9, 48. Commissioner of Public Lands, State of Wyoming, Mar. 1, 30.

Roscoe C. Patterson, Mo.
Roscoe C. McCullough, Ohio.
David A. Baird, Jr., N. J.
Patrick J. Sullivan, Wyo.
John M. Robsion, Ky.
Hugo L. Black, Ala.
William E. Brock, Tenn.

T. A. Huntley, Clerk.
H. S. Pitts, Asst. Clerk.

February 26, 1930.

Honorable C. M. Cox, Commissioner of Public Lands, Cheyenne, Wyoming.

My dear Mr. Cox:

I have your letter of February 19th and have read carefully your enclosures therewith, and fear that you have put up to me a very knotty proposition—such fear being based on the belief that it will be difficult to get the Interior Department to favor a proposed patenting by Special Act of Congress of a parcel of land, about 80 acres, within a known geologic structure of a producing oil field, even though error was made and the rights of the State to lease the tract and to collect royalties has not been heretofore questioned.

But I shall soon prepare and introduce a bill and have it referred to the Department for report and remarks—which seems to be the only sure way of getting the interested powers to pass on such a proposition. In other words, I believe the practice of the Department is not to say what it would probably do about any proposed legislation until such legislation is actually proposed and presented to one or both Houses.

It is not likely that we could bring about the enactment of such a bill in the face of opposition from the Interior Department.

Very sincerely yours, (S.) Pat Sullivan.

March 5, 1930.

Hon. Patrick J. Sullivan, United States Senator, Washington, D. C.

Dear Senator:

Receipt is acknowledged of your letted dated February 26, 1930 relative to the E½ NE¼ Sec. 36, T. 58 N., R. 100 W., Elk Basin Field, Wyoming.

In today's mail I received copies of S. 3771 a bill introduced by you, authorizing the Secretary of the Interior to convey certain lands to the State of Wyoming, and I thank you for the prompt manner in which you have taken care of this matter.

Yours very truly, C. M. Cox, Commissioner.

EFS

[fol. 470] PLAINTIFF'S EXHIBIT 67

April 8, 1930.

Honorable Carl M. Cox, Commissioner of Public Lands, Cheyenne, Wyoming.

MY DEAR MR. COX:

I beg to acknowledge your letter of March 5th, in which you told me about receipt of copies of my bill authorizing the Secretary of the Interior to convey certain lands to the State of Wyoming, being the Elk Basin Oil Field.

We now have a report from the Secretary of the Interior who does not object to the enactment of the bill provided it is amended so that the State may be required to tender a sufficient quitclaim deed to the United States to all its right, title, and interest in the remainder of Section 36, Township 58 North, Range 100 West.

I recall that in your letter of February 19th you said that the State had no interest in any part of the Section except the E½ NE¼, and would not want to make any effort to secure title to the remaining part of the Section because you deemed the land worthless for grazing purposes and of extremely doubtful value for mineral purposes.

Nevertheless I do not want to take the responsibility of stating that such amendment would be agreeable to the State without specific advices to that effect.

I am sending you herewith copy of the Secretary's report, and wish that you would please let me hear from you as promptly as possible. I believe that we can get favorable report from the Public Lands and Surveys Committee without any trouble if we assent to the proposed amendment to my bill.

Very sincerely yours, (S.) Pat Sullivan.

f—encl.

April 11, 1930.

Honorable Patrick J. Sullivan, U. S. Senator from Wyoming, Washington, D. C.

DEAR MR. SULLIVAN:

RE: E½ NE¼ Sec. 36-58-100 Elk Basin Field

Your letter dated April 8, 1930 enclosing a copy of a report from the Secretary of the Interior, has been received.

Relative to the proposed amendment to S. 3771 introduced by you, this matter will be given proper attention and you will be advised as soon as possible whether the State would agree to tender a quitclaim deed to the United States to all its right, title, and interest in the remainder of Section 36, T. 58 N., R. 100 W.

Yours very truly, C. M. Cox, Commissioner.

EFS

[fol. 471] PLAINTIFF'S EXHIBIT 68

April 19, 1930.

Mr. A. Baker, Asst. Secretary, The Ohio Oil Company, Casper, Wyoming.

DEAR MR. BAKER:

RE: Sec. 36-58-100 Elk Basin Field

I enclose copies of the letter from the Secretary of the Interior addressed to the Chairman of the Committee on Public Lands and Surveys relating to Senate File #3771 pending before the United States Congress.

This letter gives rise to some doubt in my mind as to whether or not the full title to the lands in question is not already vested in the State.

I have submitted the matter to the Attorney General for an opinion and suggest that you also submit the matter to your attorney for the same kind of an opinion. If, upon examination of the authorities, it is found that the Secretary is correct in his contention we will then proceed under the Bill now pending.

Your advice in the matter will be appreciated in due course.

Yours very truly, C. M. Cox, Commissioner.

CMC:EFS.
Encls. 3.

April 19, 1930.

Honorable W. O. Wilson, Attorney General, State of Wyoming, Cheyenne, Wyoming.

DEAR MR. WILSON:

Enclosed herewith I transmit to you correspondence relating to Senate File 3771 pending before the United States

Congress and desire to obtain your opinion as to the proper procedure in this case under the circumstances existing.

The letter from the Secretary to the Chairman of the Committee on Public Lands and Surveys gives rise to a doubt as to whether or not the State is already the owner of the full title to the section involved. A number of authorities are quoted and particular reference is made to grant under the Act of Congress January 25, 1927—44 Stat. 1026. If, in your opinion, the State is not already the owner of the land in question we will desire to proceed under the Bill pending and will probably have to accept the amendment proposed by the Secretary. In so doing, however, we will require lands in lieu of this part of the section to be relinquished.

I am sorry the Governor left my letter to him with the Secretary as it was intended to be confidential to the Governor and expressed my views of the case as it then existed, however, I feel an expression of my views will in no way be binding upon the State in the event you should hold the title to the land in question is already vested in the State and desire to proceed along those lines.

An early reply will be appreciated.

Yours very truly, C. M. Cox, Commissioner.

CMC:EFS

[fol. 472] PLAINTIFF'S EXHIBIT 69

May 23, 1930.

Mr. Jacob A. Watson, Elk Basin, Wyoming.

DEAR MR. WATSON:

RE: Section 36, T. 58 N., R. 100 W., Elk Basin Field

Replying to your letter dated May 21st relating to the above noted section you are advised there is no change in the status of said land from what existed on the date of our last correspondence, except that a Bill was filed in Congress for the purpose of confirming in the State the title to the E½ NE¼ of said Section 36.

The records show that you now have an application for a prospector's Lease on the SE¼ of the above noted section pending in this office. At the time the application was received it was not deemed advisable to issue a lease upon the

land for the reason that the title appeared to be in the United States. A further investigation may disclose that this is erroneous in which event the lease would be issued to you but subject to all defects existing in the State's title. Kindly advise if you would be willing to take a lease of this nature. In holding up your application you will understand that it was our desire not to permit you to spend money in developing the land unless the State had sufficient title to warrant such an expenditure. If, however, you wish to make the expenditures under the conditions existing or, in other words, at your own risk with a full knowledge of the defect the Board may be willing to issue the lease.

You may deal either directly with this office or through Mr. Connaghan, just as you choose.

Yours very truly, C. M. Cox, Commissioner.

CMC:EFS

The Ohio Oil Co., Casper, Wyoming

Land Department, A. Baker.

Recd. 9 32. Apr. 22 30. Commissioner of Public Lands, State of Wyoming.

April 21, 1930.

Mr. C. M. Cox, Commissioner of Public Lands, Cheyenne, Wyo.

Dear Sir:

Receipt is acknowledged of your letter of April 19, 1930, regarding Sec. 36, T. 58 N., R. 100 W., and the pending Bill for legislative relief, Senate File 3771, and in accordance with your suggestion, I am forwarding a copy of your letter and a copy of the letter of the Secretary of the Interior to the Chairman of the Senate Committee on Public Lands and Surveys, to our General Counsel, Mr. M. N. Poe, for an opinion on the question of whether the title has already vested in the State.

Yours truly, (S.) A. Baker, Asst. Secretary.

AB:ECL.

[fol. 473] PLAINTIFF'S EXHIBIT 70

THE STATE OF WYOMING, LEGAL DEPARTMENT,
Cheyenne

May 27th, 1930.

Recd. 10 51 AM. Commissioner of Public Lands, State of Wyoming. Jun. 7, '30.

William O. Wilson, Attorney General; James A. Greenwood, Deputy Attorney General; Philip S. Garbutt, Assistant Attorney General; Richard E. Jackson, Assistant Attorney General.

Hon. C. M. Cox, Commissioner of Public Lands, Capitol Building

DEAR SIR:

In your letter of April 19th you request advice as to the proper procedure to follow in establishing and preserving the interests of the State of Wyoming in Section 36, Township 58, North, Range 100 West.

By act of July 10, 1890, Chapter 664, Section 4, 26 Statutes, Section 222, Congress granted to the State of Wyoming for the support of common schools Sections 16 and 36 in each township in the state, which said sections had not theretofore been sold or otherwise disposed of.

The plat and survey of said section 36 was approved December 9th, 1915, and was accepted by the Commissioner of the General Land Office July 27, 1916. Part of said section was included in Petroleum Reserve No. 41, created by Executive Order of December 6th, 1915. The E½NE¼ of said section 36 was on December 16, 1924, defined as within the known geologic structure of the Elk Basin Oil Field; the remainder of said section having been embraced within lands described in certain oil and gas prospecting permits issued under the act of February 25th, 1920.

There is pending before Congress, Bill S No. 3771, the object of which is to establish title in the State of Wyoming to said section and declare said title to have vested as of the date of July 10, 1890. The Hon. Gerald Nye, Chairman, Committee on Public Lands and Surveys, United States Senate, under date of April 1st, 1930, requested advice from the Secretary of the Interior as to whether the approval and passage of said bill would be in any way

objectionable to the secretary as being in contravention of public interest. In replying, the secretary advised that no objection would be interposed to the enactment of such legislation, provided the bill be amended so as to require the State of Wyoming to quitclaim to the Federal Government its interest in the balance of said section.

January 25th, 1927, Bill S. No. 564, Public No. 570, was passed, the purpose of which, subject to conditions as found in sub-sections A, B, and C thereof, was to establish in the states title to numbered school sections, mineral in character; however, lands included within the limits of existing reservations are to be excluded from the operations of this act. The land in question was embraced within a reserve created December 6th, 1915. The E½NE¼ of said section has been proven to be of a known mineral value, and is being operated for the production of oil. You inform us that the remaining acreage of said section is grazing land having no known mineral value and that upon executing the quitclaim as required to comply with the conditions stated by the Secretary of the Interior, the state would be entitled to select and receive in lieu of said land so quitclaimed an amount equal in acreage to that which the state is required to quitclaim.

It is our opinion, therefore, considering all of the circumstances in the controversy and the character of the land to be quitclaimed by the state that the State of Wyoming would be justified in giving its consent to the proposed amendment to the bill now pending before Congress providing that the State of Wyoming be decreed title to the E½NE¼ of Section 36, Township 58, North, Range 100 West, with the further condition, however, that the state shall not in any way jeopardize its right to receive additional land in lieu of that portion of said Section 36 which it quitclaims to the Federal Government.

Yours truly, J. A. Greenwood (S.) Deputy Attorney General.

JAG:D.

[fol. 474] PLAINTIFF'S EXHIBIT 72

Matter as presented to Board—July 10, 1930

Matter No. — A

RE: Sec. 36 T. 58 N., R. 100 W. Elk Basin Field—Park County

The question arose in the office of the Commissioner of Public Lands in the fall of 1929 as to whether or not the State of Wyoming held title to Section 36, Township 58 North, Range 100 West for the reason that the plat and survey of the said section was not approved by the General Land Office until July 27, 1916.

A great deal of correspondence relating to various phases of the survey, the Bill now pending before Congress, etc., has been received. These letters have not been copied as it is believed the letter to Governor Emerson, written to him at Washington, D. C. on February 3, 1930 will give the Board the situation existing on the land, and the subsequent matters can be explained by Mr. Cox. The letter to Governor Emerson reads:

"This section for many years past was supposed to belong to the State of Wyoming and since October 1915 has been under constant Oil and Gas lease by the State to various persons. During that time the lease controlled by The Ohio Oil Company on the NE¼ of said section has produced approximately $13,000.00 in royalties to the State. It now appears that there is serious doubt whether or not the State acquired title to the land under its school land grant for the reason that the land was not surveyed, or at least the survey was not approved by the proper Government officials, until July 17, 1916. On July 27, 1916, or ten days after the approval of the survey, the land was embraced in Petroleum Reserve 41 created by Executive Order of December 6, 1915. The general rule of law seems to be that where land was known to be mineral in character prior to the date of the approval of the survey the title did not vest in the State under its grant of July 10, 1890.

"In this case the Department has so ruled and to the best of our knowledge and belief at the present time, based upon decisions of both, the Department of the

Interior and the Courts, we are under the firm belief that the title to this tract of land did not pass to the State of Wyoming under the grant aforesaid. It, therefore, follows that the State is facing an embarrassing situation in that it has leased the land for many years, has collected the royalties and covered it into the permanent school funds of the State. So far as I know no attempt has ever been made by the Government to dispute the possession of the property or in any manner recover the royalty collected by the State. In fact, the question itself creates a complex situation in that at the time the State leased the land to The Ohio Oil Company it would have been necessary for anyone desiring the land from the Government to have filed placer claim location and procured title in that manner. The leasing law became effective and applicable February 25, 1920.

"It is true that the lessee for The Ohio Oil Company may have, upon gaining knowledge of the circumstances, asserted preference claim under the Leasing Act and secured preference right to a lease upon the land. It so happens, however, that The Ohio Oil Company did not know of the discrepancy in the title until they were advised by this office this last fall.

"I am advising you of this situation at this time in order that while you are in Washington you may take the matter up with the officials of the Department of the Interior and if possible find out their future attitude. Also, if it is thought best that the State should endeavor to acquire title, to proceed through our representative in Congress, as a special legislative Act will be necessary to vest title in the State.

"Personally I think that such a request is not unreasonable and believe if the matter were taken up carefully the Interior officials could be convinced of the merit of our claim. There is one matter, however, that you will find in conflict, and that is certain Oil and Gas Prospecting Permits that are now outstanding against the remainder of the section. For that mat-
[fol. 475] ter the State might waive its claim to the land in conflict and take title only to the producing area which as I recall is limited to the E½NE¼ of said Section.

"If we do not endeavor to secure title eventually there is going to be trouble and it will be necessary for the State to make settlement with someone for the funds secured under its leases. It would seem to me that if early action is had, especially with a friendly administration, better results will be obtained. I suggest that you look into the matter carefully and endeavor to arrive at some solution of the question while there." Signed "C. M. Cox, Commissioner."

Request for opinion of Attorney General dated April 19, 1930 follows:

"Enclosed herewith I transmit to you correspondence relating to Senate File 3771 pending before the United States Congress and desire to obtain your opinion as to the proper procedure in this case under the circumstances existing.

"The letter from the Secretary to the Chairman of the Committee on Public Lands and Surveys gives rise to a doubt as to whether or not the State is already the owner of the full title to the section involved. A number of authorities are quoted and particular reference is made to grant under the Act of Congress January 25, 1929 (44 Stat. 1026). If, in your opinion, the State is not already the owner of the land in question we will desire to proceed under the Bill pending and will probably have to accept the amendment proposed by the Secretary. In so doing, however, we will require lands in lieu of this part of the section to be relinquished." Signed "C. M. Cox, Commissioner."

The opinion of the Attorney General dated May 27, 1930 follows:

"In your letter of April 19th you request advice as to the proper procedure to follow in establishing and preserving the interests of the State of Wyoming in Section 36, Township 58 North, Range 100 West.

"By act of July 10, 1890, Chapter 664, Section 4, 26 Statutes, Section 222, Congress granted to the State of Wyoming for the support of common schools Sections 16 and 36 in each township in the state, which said sections had not theretofore been sold or otherwise disposed of.

"The plat and survey of said section 36 was approved December 9th, 1915, and was accepted by the Commissioner of the General Land Office July 27, 1916. Part of said section was included in Petroleum Reserve No. 41, created by Executive Order of December 6th, 1915. The E½NE¼ of said section 36 was on December 16, 1924, defined as within the known geologic structure of the Elk Basin Oil Field; the remainder of said section having been embraced within lands described in certain oil and gas prospecting permits issued under the act of February 25th, 1920.

"There is pending before Congress, Bill S. No. 3771, the object of which is to establish title in the State of Wyoming to said section and declare said title to have vested as of the date of July 10, 1890. The Hon. Gerald Nye, Chairman, Committee on Public Lands and Surveys, United States Senate, under date of April 1st 1930, requested advice from the Secretary of the Interior as to whether the approval and passage of said bill would be in any way objectionable to the secretary as being in contravention of public interest. In replying, the Secretary advised that no objection would be interposed to the enactment of such legislation, provided the bill be amended so as to require the State of Wyoming to quitclaim to the Federal Government its interest in the balance of said section.

[fol. 476] "January 25, 1927, Bill S. No. 564, Public No. 570, was passed, the purpose of which, subject to conditions as found in sub-sections A, B, and C thereof, was to establish in the states title to numbered school sections, mineral in character; however, lands included within the limits of existing reservations are to be excluded from the operations of this act. The land in question was embraced within a reserve created December 6th, 1915. The E½NE¼ of said section has been proven to be of a known mineral value, and is being operated for the production of oil. You inform us that the remaining acreage of said section is grazing land having no known mineral value and that upon executing the quitclaim as required to comply with the conditions stated by the Secretary of the Interior, the state would be entitled to select and receive in lieu of said land so quitclaimed an amount equal in acreage to that which the state is required to quitclaim.

"It is our opinion, therefore, considering all of the circumstances in the controversy and the character of the land to be quitclaimed by the state that the State of Wyoming would be justified in giving its consent to the proposed amendment to the bill now pending before Congress providing that the State of Wyoming be decreed title to the E½NE¼ of Section 26, Township 58 North, Range 100 West, with the further condition, however, that the state shall not in any way jeopardize its right to receive additional land in lieu of that portion of said Section 36 which it quitclaims to the Federal Government. Yours truly, J. A. Greenwood, Deputy Attorney General." (Signed)

The Matter Is Presented For Disposition of It By the Board:

Board Action: July 10, 1930.

Upon motion by Governor Emerson, seconded by Mrs. Morton, the Board instructed the Commissioner to take care of the case and ordered that a Quit Claim Deed be filed after title is vested in the State of Wyoming for the E½NE¼ of said Section 36, T. 58 N., R. 100 W.

The vote on the motion being:

Ayes:—Governor Emerson, Mr. Clark, Mr. Alcorn and Mrs. Morton.

Absent:—Mr. Edelman.

PAP

[fol. 477] PLAINTIFF'S EXHIBIT 73

Recd. 9 43 A. M. Commissioner of Public Lands, State of Wyoming, Feb. 18, '31.

THE OHIO OIL COMPANY,

Casper, Wyoming

A. Baker, Asst. Secretary Lands and Taxes.

Feb. 17, 1931.

Mr. C. M. Cox, Commissioner of Public Lands, Cheyenne, Wyo.

DEAR SIR:

Replying to your letter of February 9, 1931, relative to the bill in Congress, Senate File 3771, authorizing the Secretary of the Interior to convey to the State of Wyoming, the E½NE¼ Sec. 36-58-100, embraced in the N. L. Battenschlag oil and gas lease, operated by this company, I note what you say in your letter regarding the doubt on the part of your office and of the Board as to the advisability of relinquishing the balance of Sec. 36, on account of the question as to the mineral value of this land.

I took this up with our Geological Department, with the view of possibly furnishing you some suggestions or aid on this point, and I have received a memorandum from Mr. Wilson B. Emery, our Geologist, in which he states that the discovery of oil in the Embar and Tensleep sands at Byron and of gas in these formations, and oil in the Madison formation at Garland, would seem to justify the expectation that production may be found in these formations in the Elk Basin Field. Drilling in Oregon Basin has indicated that the productive area extends to the limit of closure on that structure, and suggests that similar conditions may possibly exist in other fields where black oil is present. Mr. Emery's conclusion is that while he could not recommend the balance of Sec. 36-58-100, excepting E½NE¼, as prospective oil territory justifying drilling by The Ohio Oil Co., he would certainly hesitate to say that no portion of this section except the E½NE¼ has any possibilities for black oil production. It is his opinion, and that seems to be reasonable, that it would be more fitting and appropriate

for the State Geologist to investigate and determine the oil possibilities of this section, rather than a geologist for a private company, especially as in this case, the geologist for the company which operates the lease.

In an effort to cooperate with the State in determining as to the value of the land in Sec. 36, outside of the E½NE¼, if it would be of assistance, we could furnish your office or the State Geologist, a copy of our geological contour map of the field. Please let me know if such a map will be of any assistance. If so, I will be glad to furnish it.

One further thought occurs to me, and that is, after the State Geologist has made his investigation, I am very sure that if he desired to do so, our geologists would be glad to confer with him and exchange ideas or furnish him any information within their power.

Yours truly, A. Baker (S.), Assist. Secretary.

AB:ECL.
Cc. Mr. Stewart.

[fol. 478] PLAINTIFF'S EXHIBIT 74

October 12, 1933.

Hon. Fred W. Johnson, Commissioner, General Land Office, Washington, D. C.

DEAR MR. JOHNSON:

At the time I was in your office this past June, I had occasion to check up with the official who has charge of so-called lieu lands (I think Mr. Markus), and was particularly interested in trying to obtain an exchange with the Forest Department.

Mr. Markus advised this writer at that time that, with your permission, he would submit to this office a plan whereby such an exchange could be made.

I would appreciate your referring this letter to Mr. Markus, and asking him to kindly forward the proposed plan, so that in case it will require action by Congress, we can get the matter in shape before the next session of Congress.

Also wish to take up with you the matter of the possibility of the state obtaining title to all of Section 36, Tp. 58 N.,

R. 100 W., 6th P. M.; and I think that the records of your office will give you such information as to the present status of said section; and if you can have Mr. Markus submit some suggestion to this office whereby the state may obtain title to said last named section, I will appreciate it.

Thanking you for your attention to the above, and with kind regards,

Very truly yours, C. H. Fitzpatrick, Commissioner of Public Lands.

CHF/S.

[fol. 479] PLAINTIFF'S EXHIBIT 75

Office of the Commissioner.

UNITED STATES DEPARTMENT OF THE INTERIOR
General Land Office,
Washington

Oct. 27, 1933.

Mr. C. H. Fitzpatrick, Commissioner of Public Lands and Farm Loans, Cheyenne, Wyoming

MY DEAR MR. FITZPATRICK:

With reference to your letter of October 12, 1933, I have given further consideration to the matter which you discussed while you were in Washington last June. The Secretary only can speak for the Department concerning legislation affecting public lands. For this reason, I wish to suggest that you submit the matter to the Secretary stating briefly what you have in mind and giving a description of the sections involved.

Sec. 36, T. 58 N., R. 100 W., 6th P. M., Wyoming, has formed the subject of some correspondence between this office and the State. The E½ NE¼ of said Sec. 36 also formed the subject of S. 3771, a bill introduced in the 71st Congress. Since that time the act of May 2, 1932 (47 Stat. 140), has been passed, which makes the provisions of the act of January 25, 1927 (44 Stat. 1026) effective so that title to mineral land may vest in the State upon the extinguishment of any existing withdrawal. The termination of withdrawals will of course not affect valid existing rights acquired under any public land law. In other words,

in order to make the mineral grant effective under the act of January 25, 1927, in the manner provided by said act of May 2, 1932, there must be no adverse claims to the land.

Sincerely, (S.) Fred W. Johnson.

[fol. 480] PLAINTIFF'S EXHIBIT 76

October 30, 1933.

Mr. Mart T. Christensen, Register, United States Land Office, Cheyenne, Wyoming

Re: Sec. 36, T. 58 N., R. 100 W.

DEAR MR. CHRISTENSEN:

Will you kindly list to this office any existing claims on any portion of the above noted school section, giving complete information with filing numbers, description, dates, etc.—and also the present status of each.

The State of Wyoming claims all rights including the mineral rights in and to said Sec. 36, T. 58 N., R. 100 W, and this office desires to take such steps to make the mineral grant effective under the Act of January 25, 1927 (44 Stat. 1026) in the manner provided by the act of May 2, 1932 (47 Stat. 140).

Yours very truly, LeGrand Patrick, Deputy Commissioner.

RB.

[fol. 481] PLAINTIFF'S EXHIBIT 77

AM 1N 9:34 Commissioner of Public Lands, State of Wyoming, Nov. 1, 33.

United States Department of the Interior, General Land Office, District Land Office

Cheyenne, Wyoming, October 31, 1933.

LeGrand Patrick, Deputy Commissioner Public Lands, Capitol Building, Cheyenne, Wyoming.

SIR:

Answering your letter of October 30th, in regard to the status of Sec. 36, T. 58 N., R. 100 W, you are advised that our records show oil and gas prospecting permit 045175

of R. W. Bennett, Upham, North Dakota, includes the W½ NE¼ and SE¼, Sec. 36, T. 58 N., R. 100 W.; also Right of Way Application 051884 for a two inch water pipe line was granted to the Midwest Refining Company, January 17, 1931, across the N½ NE¼ of this section.

There are no other entries, filings or applications involving lands in this section, as shown by our records.

Very respectfully, (S.) M. T. Christensen, Register.
RB

[fol. 482] PLAINTIFF'S EXHIBIT 78

State of Wyoming, Office of Commissioner of Public Lands

Cheyenne, Wyoming,
November 1, 1933.

Re: Sec. 36, T. 58 N., R. 100 W.

DEAR MR. CHRISTENSEN:

This office is in receipt of your letter of October 31st stating, in reference to the above section, that your records show

"Oil and gas prospecting permit 045175 of R. W. Bennett, Upham, North Dakota, includes the W½ NE¼ and SE¼, Sec. 36, T. 58 N., R. 100 W."

"Also Right of Way Application 051884 for a two inch water pipe line was granted to the Midwest Refining Company, January 17, 1931, across the N½ NE¼ of this section."

Will you kindly give us the conditions and present status of each of these entries or filings, so that we may have complete information regarding them.

Yours very truly, (S.) C. H. Fitzpatrick, Commissioner. LeGrand Fatrick, Deputy Commissioner.

Mr. Mart T. Christensen, Register, United States Land Office, Cheyenne, Wyoming.

RB

[fol. 483] PLAINTIFF'S EXHIBIT 79

AM 1 N, Commissioner of Public Lands, 9:22 A.M. State of Wyoming, Nov. 4, 33.

United States Department of the Interior

General Land Office, District Land Office

Cheyenne, Wyoming, November 3, 1933.

Commissioner of Public Lands, Cheyenne, Wyoming.

SIR:

In answer to your letter of the first of November 1933, Oil and gas permit serial 045175 of R. W. Bennett, is still intact upon the records of this office. An extension of time was granted the permittee by letter "N" of August 8, 1931, and he was allowed until August 1, 1933, in which to comply with the requirements of the permit, and no drilling to be done prior to August 1, 1932. Departmental letter "N" of August 28, 1933, transmitted instructions relative to assignment of this and other permits to Herbert Stokes, Room 2907, 120 Broadway, New York City.

The right of way of the Midwest Refining Company serial 051884 by the Department, January 17, 1931, and assignment of right of way to Stanolind O & G Co., approved March 31, 1933.

Very respectfully, (S.) M. T. Christensen, Register.

[fol. 484] PLAINTIFF'S EXHIBIT 80

November 7, 1933.

Hon. Fred W. Johnson, Commissioner General Land Office, Washington, D. C.

Re: Sec. 36, T. 58 N., R. 100 W.

DEAR MR. JOHNSON:

In reference to your letter of October 27th regarding the above noted school section to which the State of Wyoming claims title:

This office is informed by the United States Land Office, Cheyenne, as follows:

"Oil and gas permit serial 045175 of R. W. Bennett, is still intact upon the records of this office. An exten-

sion of time was granted the permittee by letter "N" of August 8, 1931, and he was allowed until August 1, 1933, in which to comply with the requirements of the permit, and no drilling to be done prior to August 1, 1932. Departmental letter "N" of August 28, 1933, transmitted instructions relative to assignment of this and other permits to Herbert Stokes, Room 2907, 120 Broadway, New York City.

"Right of Way Application 051884 for a two inch water pipe line was granted to the Midwest Refining Company, January 17, 1931, across the N½ NE¼, and assignment of right of way to Stanolind O & G Co., approved March 31, 1933.

Will you kindly inform this office if the above information is correct as shown by your records. Also the reason for assignment of permit 045175 August 28, 1933, as it was assumed that the permit terminated August 1, 1933.

Are there any other entries, filings or applications involving lands in said Sec. 36, T. 58 N., R. 100 W. as shown by your records? Complete information will be appreciated.

Yours very truly, C. H. Fitzpatrick, Commissioner.

RB.

[fol. 485] PLAINTIFF'S EXHIBIT 81

Address Only The Commissioner of The General Land Office.

JLK
RJR
AM

AM IN Commissioner of Public Lands 10 15, State of Wyoming, Nov. 25, 33.
AEK
ZBC

United States Department of the Interior

General Land Office, Washington

Nov. 22, 1933.

In Reply Please Refer to Cheyenne 045175 "N" AEK 051884.

21—10-Orig.

Oil and gas Information

Mr. C. H. Fitzpatrick, Commissioner of Public Lands and Farm Loans of the State of Wyoming, Cheyenne, Wyoming.

My dear Sir:

Receipt is acknowledged of your letter of November 7, 1933, relative to Sec. 36, T. 58 N., R. 100 W., 6th P. M., Wyoming.

In reply I have to advise you that the information given you by the Register of the local office at Cheyenne as set out in your letter is correct according to the records in this office. The assignment of permit Cheyenne 045175 from R. W. Bennett to Herbert Stokes has not as yet been approved, action thereon being suspended pending the outcome of an application for additional extension of time filed in connection with the permit and which application is now before the Special Departmental Committee for its consid-
[fol. 486] eration and recommendation to the Secretary.

The records of this office do not disclose any other filings or applications involving lands in said Sec. 36 other than oil and gas prospecting permit 045175 and right of way permit 051884.

Very respectfully, (S.) Fred W. Johnson, Commissioner.

11-16-ect

[fol. 487] Plaintiff's Exhibit 82

November 29, 1933.

Hon. Fred W. Johnson, Commissioner General Land Office, Washington, D. C.

Re: Cheyenne 045175-051884 "N" AEK, Nov. 22, 1933; Sec. 36, T. 58N., R. 100 W

Dear Mr. Johnson:

This office is in receipt of your letter of November 22, 1933, relative to Sec. 36, T. 58 N., R. 100 W., 6th P. M., Wyoming.

You advise that the assignment of permit Cheyenne 045175 from R. W. Bennett to Herbert Stokes has not as yet been

approved, action thereon being suspended pending the outcome of an application for additional extension of time filed in connection with the permit and which application is now before the Special Departmental Committee for its consideration and recommendation to the Secretary.

On behalf of the State of Wyoming, I desire to protest to the Special Departmental Committee, through your office, the allowance of an additional extension of time in connection with permit 045175, and respectfully request that the way be cleared for granting the mineral rights in and to this section, to the State of Wyoming, as provided under the act of May 2, 1932 (47 Stat. 140) by cancellation of the Oil and Gas Permit, Cheyenne Serial 045175.

Yours very truly, C. H. Fitzpatrick, Commissioner.

RB.

[fol. 488] PLAINTIFF'S EXHIBIT 83

Address Only The Commissioner of The General Land Office.

PLK. RJR. AM. WJH.

AEK. M.L.H.

United States Department of the Interior
General Land Office, Washington

Received 2:10 P. M. Commissioner of Public Lands, State of Wyoming. Dec. 13, 33.

In Reply Please Refer To Cheyenne 045175 "N" AEK 051884.

Dec. 9, 1933.

Oil and Gas. Information.

Mr. C. H. Fitzpatrick, Commissioner of Public Lands and Farm Loans of the State of Wyoming, Cheyenne, Wyoming.

MY DEAR SIR:

This office is in receipt of your letter of November 29, 1933, wherein you state that on behalf of the State of Wyoming you desire to protest to the special departmental committee through this office the allowance of an additional extension of time on oil and gas prospecting permit Chey-

enne 045175, and request that "the way be cleared for granting the mineral rights in and to this section, to the State of Wyoming, as provided under the act of May 2, 1932 (47 Stat. 140) by cancellation of the oil and gas permit".

In reply I have to advise you that under the act mentioned by you it is expressly provided "that any lands * * * included in any valid application, claim, or right initiated or held under any of the existing laws of the United States, [fol. 489] unless or until such reservation, application, claim or right is extinguished, relinquished, or canceled * * * are excluded from the provisions of this act".

This permit having been outstanding at the date of the passage of said act it constituted a valid claim held under the laws of the United States and unless it can be shown that the permittee or holder of the permit failed to comply with the laws and regulations governing oil and gas prospecting permits, there would be no authority for canceling said permit.

Further, inasmuch as this land in Sec. 36 is within a petroleum reserve, the State's rights would not attach under the act of January 25, 1927, as amended by the act of May 2, 1932, even were the prospecting permit canceled. Title will not vest in the State until the land is restored from the reservation. (See 53 I.D. 365.)

From the above you will note that your letter is insufficient to be considered as a protest against the allowance of the application for extension in this case. If you desire to file a formal protest it must set out facts not disclosed by the [fols. 490-91] record in the case, or reasonably known to the Department, showing that the permittee has failed to comply with the oil and gas regulations in connection with his permit and a copy of said protest must be served on the permittee and evidence of such service filed with the record.

However, I see no reason for requesting the Committee to withhold action on the application for extension until you determine whether or not you will file such a protest.

Very respectfully, (S.) Fred W. Johnson, Commissioner.

LMN.

[fol. 492] PLAINTIFF'S EXHIBIT 84

Address only the Commissioner of the General Land Office.

United States Department of the Interior

General Land Office, Washington

Jan. 2, 1935.

In Reply Please Refer to 1581965 "F" CBC.
Information.

The Ohio Oil Company, Findlay, Ohio.

GENTLEMEN:

Reference is had to a personal call by Mr. Gee on December 22, 1934, concerning certain school land sections in Wyoming.

It appears from the records that the plat of survey of SE¼ NW¼ and E½ Sec. 16, T. 33 N., R. 76 W., was approved May 29, 1884; that the plat of survey of the SE¼ SE¼ SE¼ Sec. 16, T. 40 N., R. 79 W., was approved May 28, 1883; that the plat of survey of Sec. 36, T. 26 N., R. 88 W., was approved August 15, 1888; that the plat of survey of Sec. 16, T. 16 N., R. 104 W., was approved February 10, 1888; and that the original plat of survey of Sec. 36, T. 48 N., R. 100 W., was approved February 8, 1884. On a supplemental plat approved January 20, 1925, the latter Sec. 36 is designated as Tract 41.

[fol. 493] In view of these facts and as said lands were not then withdrawn, reserved or disposed of in any way, and were not known to be mineral in character, it is presumed that titles vested in the State of Wyoming under the act of Congress of July 10, 1890 (26 Stat. 222), upon admission of the State into the Union. Since that time the lands in Sec. 16, T. 33 N., R. 76. W.; Sec. 36, T. 26 N., R. 88 W.; Sec. 16, T. 16 N., R. 104 W., and Tract 41 (formerly Sec. 36), T. 48 N., R. 100 W., have been found to be of known oil structure and have been included in petroleum reserves by Executive orders.

As to the NE¼ Sec. 36, T. 58 N., R. 100 W., you are advised that the plat of survey was approved December 9, 1915, and accepted by this office on July 27, 1916, upon which date the school-land grant to the State would have become effective if the land was of the character and status granted

(240 U. S. 192). However, the township was embraced in various withdrawals under the coal land laws and part of Sec. 36 was classified as coal land at $20 per acre, and part at $25 per acre, on March 12, 1910. All of Sec. 36 was embraced in Petroleum Reserve No. 41, by Executive order of December 6, 1915, which prevented title from passing to the State upon acceptance of the survey. See case of [fols. 494-495] State of Utah vs. Lichliter et al. (50 L. D. 231), and Supreme Court decisions cited therein.

The E½ NE¼ said Sec. 36 was defined on December 16, 1924, as within the known geologic structure of the Elk Basin Oil Field, and the W½ NE¼ is embraced in oil and gas prospecting permit 045175, issued February 25, 1928, to B. W. Bennett under the act of February 25, 1920 (41 Stat. 437).

The withdrawal for petroleum reserve excluded the land from the grant of mineral lands made by the act of January 25, 1927 (44 Stat. 1026). See 52 L. D. 51.

Very respectfully, Fred W. Johnson, Commissioner.

12-28-eim.

Copy

[fols. 496-497] PLAINTIFF'S EXHIBIT 85

State of Wyoming

Office of Commissioner of Public Lands

Capitol Building, Cheyenne, Wyoming

Address reply to The Commissioner.

July 13, 1938.

Re: SE¼:W½ NE¼ Section 36, Township 58, Range 100

DEAR MR. GOPPERT:

We are in receipt of your letter of July 7 and wish to inform you that the State would not care to lease the above described land at this time inasmuch as there is a question of title pending.

Yours very truly, Mrs. Bernice C. Gill, Deputy Commissioner.

Ernest J. Goppert, Cody, Wyoming.
JR:MAB

[fol. 498] PLAINTIFF'S EXHIBIT 86

The State of Wyoming

Legal Department, Cheyenne

Ewing T. Kerr, Attorney General.
Harold I. Bacheller, Deputy Attorney General.
Arthur Kline, Assistant Attorney General.

February 8, 1940.

Honorable James B. Griffith, Commissioner of Public Lands, Capitol Building.

Re: Section 36-58-100

DEAR MR. GRIFFITH:

We have gone over the records of your office in connection with the title to the above mentioned real property and recite the pertinent facts in relation thereto, as follows:

Under the Congressional Act of July 10, 1890, title to Sections 16 and 36, in each Township, was vested in the State of Wyoming. The proceeds in income therefrom to be used for the support of the common schools. The plat and survey of Section 36-58-100, was approved by the Commissioner of the General Land Office July 27, 1916. On December 6, 1915, however, by executive order, the above Section was included within petroleum reserve number 41. It would, therefore, seem that by reason of the mineral reservation contained in the withdrawal order of December 6, 1915, that the State did not and does not now have title to the minerals contained in this Section.

The E½ NE¼ of said section has been designated by the government as being within the known geologic structure of a producing oil or gas field.

A Bill was introduced in Congress about 1929 or 1930, the object and purpose of the same being to establish title to this land in the State of Wyoming as of July 10, 1890. This Bill passed the Senate, but apparently was never considered by the House.

It is suggested by a memorandum in your file that title to this section and the minerals therein contained vested in Wyoming prior to December 6, 1915, notwithstanding the [fol. 499] fact *fact* that a plat and survey were not accepted until July 27, 1916. It apparently was recognized by your

(240 U. S. 192). However, the township was embraced in various withdrawals under the coal land laws and part of Sec. 36 was classified as coal land at $20 per acre, and part at $25 per acre, on March 12, 1910. All of Sec. 36 was embraced in Petroleum Reserve No. 41, by Executive order of December 6, 1915, which prevented title from passing to the State upon acceptance of the survey. See case of [fols. 494-495] State of Utah vs. Lichliter et al. (50 L. D. 231), and Supreme Court decisions cited therein.

The E½ NE¼ said Sec. 36 was defined on December 16, 1924, as within the known geologic structure of the Elk Basin Oil Field, and the W½ NE¼ is embraced in oil and gas prospecting permit 045175, issued February 25, 1928, to B. W. Bennett under the act of February 25, 1920 (41 Stat. 437).

The withdrawal for petroleum reserve excluded the land from the grant of mineral lands made by the act of January 25, 1927 (44 Stat. 1026). See 52 L. D. 51.

Very respectfully, Fred W. Johnson, Commissioner.

12-28-eim.

Copy

[fols. 496-497] PLAINTIFF'S EXHIBIT 85

State of Wyoming

Office of Commissioner of Public Lands

Capitol Building, Cheyenne, Wyoming

Address reply to The Commissioner.

July 13, 1938.

Re: SE¼:W½ NE¼ Section 36, Township 58, Range 100

DEAR MR. GOPPERT:

We are in receipt of your letter of July 7 and wish to inform you that the State would not care to lease the above described land at this time inasmuch as there is a question of title pending.

Yours very truly, Mrs. Bernice C. Gill, Deputy Commissioner.

Ernest J. Goppert, Cody, Wyoming.
JR:MAB

[fol. 498] PLAINTIFF'S EXHIBIT 86

The State of Wyoming

Legal Department, Cheyenne

Ewing T. Kerr, Attorney General.
Harold I. Bacheller, Deputy Attorney General.
Arthur Kline, Assistant Attorney General.

February 8, 1940.

Honorable James B. Griffith, Commissioner of Public Lands, Capitol Building.

Re: Section 36-58-100

DEAR MR. GRIFFITH:

We have gone over the records of your office in connection with the title to the above mentioned real property and recite the pertinent facts in relation thereto, as follows:

Under the Congressional Act of July 10, 1890, title to Sections 16 and 36, in each Township, was vested in the State of Wyoming. The proceeds in income therefrom to be used for the support of the common schools. The plat and survey of Section 36-58-100, was approved by the Commissioner of the General Land Office July 27, 1916. On December 6, 1915, however, by executive order, the above Section was included within petroleum reserve number 41. It would, therefore, seem that by reason of the mineral reservation contained in the withdrawal order of December 6, 1915, that the State did not and does not now have title to the minerals contained in this Section.

The E½ NE¼ of said section has been designated by the government as being within the known geologic structure of a producing oil or gas field.

A Bill was introduced in Congress about 1929 or 1930, the object and purpose of the same being to establish title to this land in the State of Wyoming as of July 10, 1890. This Bill passed the Senate, but apparently was never considered by the House.

It is suggested by a memorandum in your file that title to this section and the minerals therein contained vested in Wyoming prior to December 6, 1915, notwithstanding the [fol. 499] fact *fact* that a plat and survey were not accepted until July 27, 1916. It apparently was recognized by your

Department and our Representatives in Congress when the Bill to establish title in Wyoming, above mentioned, was introduced that this State considered its title to these minerals invalid.

We are of the opinion that the proper course to follow now is to have our Representatives in Congress introduce a Bill similar to the one which passed the Senate in 1930, and to that end we have prepared a draft, following substantially the one formerly introduced, which you may use as a guide in your further consideration of this matter. If Congress refuses to enact this Legislation then, of course, the State will necessarily fall back on what legal claim or right, if any, it has to these minerals.

It might be pointed out that the Secretary of the Interior, when the previous legislation was before Congress, indicated that he did not object to this Bill so far as that part of the section was concerned which had been proved valuable for oil, but he insisted that the State quitclaim to the government the balance of the section. This condition was no doubt imposed by the Secretary, because oil and gas prospecting permits, under the 1920 Leasing Act, had been issued, covering the remainder of the section.

(S.) Very truly yours, Harold I. Bacheller, Deputy Attorney General.

HIB:mm.

Received: 1940 Feb. 8, PM 4:52. Commissioner of Public Lands, State of Wyoming.

[fols. 500-501] A Bill Authorizing the Secretary of the Interior to Convey Certain Lands to the State of Wyoming

Be It Enacted By the Senate and House of Representatives of the United States of America in Congress assembled that the Secretary of the Interior, be and he is hereby authorized and directed to forthwith issue patent to the State of Wyoming for the E½ NE¼ of Section 36, Township 58, North, Range 100, West of the 6th P. M., Park County, Wyoming, provided that the title to said lands shall be held and considered for all purposes to have vested in the State of Wyoming on July 10, 1890.

Received 1940 Feb. 8 PM 4:52, Commissioner of Public Lands, State of Wyoming

[fol. 502] PLAINTIFF'S EXHIBIT 87

THE STATE OF WYOMING

Office of Commissioner of Public Lands and Farm Loans,

Cheyenne

James B. Griffith, Commissioner.
Winifred S. Kienzle, Deputy Commissioner.

April 27, 1940.

Hon. Fred W. Johnson, Commissioner of the General Land Office, Department of the Interior, Washington, D. C.

DEAR MR. COMMISSIONER:

Re: Title to School Section 36, Tp. 58 N., R. 100 W., Park County

A memorandum relative to Sec. 36, Tp. 58 N., R. 100 W., Park County, is enclosed.

You will note from the memorandum, which has been prepared by the office of the Attorney General, that the title of the State of Wyoming to the school section is being questioned.

Winifred S. Kienzle, Deputy Commissioner for this office, will be in Washington, and will call at your office May 2nd to go over with you or your personnel, this matter in order that some solution of the complications involving this section may be worked out.

It is possible that remedial legislation to secure title for the State could be enacted during the present session of Congress if that action is necessary.

The Board of Land Commissioners, as well as myself, will appreciate any assistance your Department may give Mrs. Kienzle at the time she calls upon you.

With kind regards,

Very truly yours, James B. Griffith, Commissioner.

WSK/S.
Enc.-Memorandum.

[fol. 503] MEMORANDUM

Section 36-58-100—Elk Basin Oil and Gas Field

On December 9, 1915, the plat of survey of fractional Township 58, including Section 36, was approved although it was not accepted by the Department of the Interior until July 27, 1916. On December 6, 1915, all of Section 36 was embraced in Petroleum Reserve No. 41 by executive order and it is contended by the government and admitted for *the purpose of this memorandum only*, that title to the minerals did not pass to the State upon the acceptance of the survey, the withdrawal order having intervened. Subsequently, a portion of this land was included in an area defined as being within a known geologic structure of the Elk Basin Oil Field.

The Ohio Oil Company holds a lease on the NE¼ of this Section and has obtained oil and gas production on the E½NE¼ and is now operating this portion of the lease. The records in the office of the United States Land Office, Cheyenne, Wyoming, show that on October 27, 1938, oil and gas lease No. 060973 was issued to one Jacob A. Watson, covering the W½NE¼ and the SE¼ of said Section, and on March 9, 1940, a coal prospecting application was filed by William Mauch, et al., for all of said Section. The file indicates that since about 1930 correspondence has been carried on with the General Land Office in an endeavor to settle the question as to the ownership of the minerals in these lands.

During 1930 a Bill was introduced in Congress to vest the title to this Section in the State of Wyoming as of July 10, 1890. This would, of course, settle the question as to the ownership of the minerals. The matter was then taken up with the Secretary of the Interior who withdrew any objection to the Bill, provided it was limited to cover only the E½NE¼, and that the State of Wyoming would quitclaim to the government its interest in the balance of said Section.

It is not clear in this correspondence whether the government was requesting that this State cede the surface as well as the minerals in the remainder of the Section, but we assume that it refers only to the minerals. Using the Leasing Act of February 25, 1920, the government had theretofore issued certain oil and gas prospecting permits and no

doubt the Secretary of the Interior had in mind the protection of the permittees by insisting that Wyoming quitclaim as above indicated. The Bill in its modified form passed the Senate but no action was taken on the same in the House and the status of the land in controversy remains the same as of 1930 when the Bill was introduced.

We have prepared another Bill and the same is attached hereto. The question as to whether or not this Bill should include the whole Section has been given consideration by your Department as well as this office. At the present time, as above noted, there is outstanding, only one oil and gas prospecting permit which covers the W½NE¼ and the SE¼, so it would seem that there should be no objection on the part of the Department of the Interior to vesting [fols. 504-505] mineral title to all of the remainder of the Section in the State. It will be observed from geological reports contained in the file, at least so far as the present sands are concerned, the E½NE¼ is the only part of said Section that has any potential mineral value. It is suggested that a conference be held with the officials of the Department of the Interior and Wyoming's Congressional Delegation with the view of early passage of the proposed Bill.

Inasmuch as Wyoming has received some $13,000.00 in royalties which it might be compelled to refund and to such extent cause a depletion in the permanent school funds of the State, it would seem advisable, if necessary, to concede title in all of said lands, except the E½NE¼, to the government, if, by so doing, it can protect its interest in said E½NE¼.

We might also point out that, assuming the correctness of the government's contention, Congress could not, by Congressional action, affect the interest of any permittee in any outstanding oil and gas permit which had vested prior to the passage of the proposed validating act.

So far as the coal application is concerned it naturally falls into the same category as the oil and gas permits and what has been said herein regarding these permits applies equally to the coal application.

[fol. 506] Copy

PLAINTIFF'S EXHIBIT 88

The Secretary of the Interior,

Washington

June 29, 1942.

MY DEAR MR. ROBINSON:

Further reference is made to your letter dated May 21, requesting a report on H. R. 7104, a bill "Authorizing the Secretary of the Interior to convey certain lands to the State of Wyoming."

I recommend that the proposed legislation be not enacted.

Section 36, T. 58 N., R. 100 W., 6th P. M., Wyoming, the land involved, was included in Petroleum Reserve No. 41, created by Executive Order of December 6, 1915, which reads, in part, as follows:

> "It is ordered that the lands hereinafter described be and the same are hereby withdrawn from settlement, location, sale or entry, and reserved for classification and in aid of legislation."

This petroleum reserve having been created prior to the acceptance of the survey on July 27, 1916, which reservation is still in force, title to the land did not vest in the State under the act of July 10, 1890 (26 Stat. 222). 53 I. D. 365-367; *United States* v. *Morrison*, 240 U. S. 192. By subsection (c) of Section 1 of the Act of January 25, 1927 (44 Stat. 1026), lands in existing reservations were excluded from the grant made by that act.

The land was reserved in 1915 under a policy begun several years earlier of withdrawing and reserving petroleum lands for classification and in aid of legislation. When the act of January 25, 1927 (44 Stat. 1026; 43 U. S. C. 870) granting mineral school lands to the State was passed, all of the prospectively valuable petroleum lands as then known in the western public domain had been reserved. These facts were well known to the Congress in 1927 when it made the grant and it must be assumed that the provision in the act excepting those school sections embraced in reservations of, for or by the United States was inserted, in part at

least, to prevent title to these petroleum lands from passing out of the Federal Government.

Since the act of January 25, 1927, the Department at all times has construed this exception as applying to petroleum reserves and on the strength of that construction, there [fols: 507-508] was on October 27, 1938, issued an oil and gas lease embracing the W½NE¼ and SE¼ of this section to Jacob A. Watson. Thus, not only would enactment of the bill run contrary to the long established policy of the Executive and Legislative branches of the Government, but it would ignore valuable private rights granted pursuant to that policy.

The W½NE¼, NW¼, N½SE¼ Sec. 36 have been classified as coal land at $20 per acre and the E½NE¼ has been classified as coal land at $25 per acre. The NE¼ Sec. 36 is subject to a right-of-way for a waterpipe line granted to the Midwest Refining Company on January 17, 1931, under the Act of February 15, 1901 (31 Stat. 790). The E½NE¼ Sec. 36 has been defined as being in the known geologic structure of the Elk Basin Field, a producing oil and gas field.

The State may select 640 acres of other land in lieu of Section 36, T. 58 N., R. 100 W., under the provisions of Section 2275, United States Revised Statutes, as amended by the Act of February 28, 1891 (26 Stat. 796).

The Director, Bureau of the Budget, has informed me that he has no objection to the presentation of this report to your Committee.

Sincerely yours, (Sgd.) Harold L. Ickes, Secretary of the Interior.

Hon. J. W. Robinson, Chairman, Committee on the Public Lands, House of Representatives.

[fol. 509] Copy

PLAINTIFF'S EXHIBIT 89

United States Senate

Committee on Appropriations

Carter Glass, Va., Chairman; Kenneth McKellar, Tenn.; Carl Hayden, Ariz.; Elmer Thomas, Okla.; Millard E. Tydings, Md.; Richard B. Russell, Ga.; Pat McCarran, Nev.;

John H. Overton, La.; John H. Bankhead, Ala.; Joseph C. O'Mahoney, Wyo.; Harry S. Truman, Mo.; Theodore Francis Green, R. I.; Francis Maloney, Conn.; Dennis Chavez, N. Mex.; James M. Mead, N. Y.; Wall Doxey, Miss.; Burnet R. Maybank, S. C.; Gerald P. Nye, N. Dak.; Styles Bridges, N. H.; Henry Cabot Lodge, Jr., Mass.; Rufus C. Holman, Oreg.; Wallace H. White, Jr., Maine; Chan Gurney, S. Dak.; C. Wayland Brooks, Ill. Everard H. Smith, Clerk. John W. R. Smith, Asst. Clerk.

Received 1943 Jan 19 AM 9:20, Commissioner of Public Lands, State of Wyoming.

January 13, 1943.

Hon. L. C. Hunt, Governor of Wyoming, Cheyenne, Wyoming.

DEAR LES:

In compliance with the request of Commissioner James B. Griffith under date of December 12, 1942, transmitting a resolution of the Board of Land Commissioners, I am introducing a bill authorizing the Secretary of the Interior to convey an unrestricted patent for the east half of northeast quarter of section 36, township 58 north, range 100 west to the State of Wyoming. The bill I am introducing is in the form originally introduced by Senator Sullivan on January 6, 1930, and which Senator Kendrick favorably reported to the Senate on February 17, 1931, with a favorable report from the Secretary of the Interior. It seemed desirable to use exactly the language which was previously approved by the Interior Department.

If the Board of Land Commissioners have any other suggestions in the matter, however, I should be glad to be notified.

With every good wish,

Sincerely yours, (S.) Joe. (Joseph C. O'Mahoney.)

JCOM:M

P. S. Frank Barrett is introducing the bill in the House.

[fol. 510] S. 365

78th Congress, 1st Session

In the Senate of the United States

January 14, 1943.

Mr. O'Mahoney (for himself and Mr. Robertson) introduced the following bill; which was read twice and referred to the Committee on Public Lands and Surveys:

A BILL

Authorizing the conveyance of certain lands in Park County, Wyoming, to the State of Wyoming

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and directed to issue an unrestricted patent to the State of Wyoming for the east half of northeast quarter of section 36, township 58 north, range 100 west of the sixth principal meridian, in Park County, Wyoming, upon tender by the State of Wyoming of a quitclaim deed to the United States of all its right, title, and interest in and to the remaining lands in said section 36: Provided, That title to said land shall be held and considered to have vested in the State of Wyoming on July 10, 1890.

[fols. 511-512] [Endorsed:] 78th Congress, 1st Session. S. 365. A Bill Authorizing the conveyance of certain lands in Park County, Wyoming, to the State of Wyoming. By Mr. O'Mahoney and Mr. Robertson. January 14, 1943. Read twice and referred to the Committee on Public Lands and Surveys.

Received 1943 Jan 19 AM 9 20. Commissioner of Public Lands, State of Wyoming.

[fol. 513] Copy

PLAINTIFF'S EXHIBIT 90

State of Wyoming

Supplemental Application for Mineral Lease

To the Commissioner of Public Lands, State of Wyoming, Cheyenne:

Supplementing our application of July 12, 1943, filed on July 16, 1943, for oil and gas lease to the West Half (W½) and the Southeast Quarter (SE¼) of Section 36, Township 58 North, Range 100 West, containing 480 acres, more or less, in Park County, Wyoming, the undersigned applicant respectfully states that it will assist the State in attempting to eliminate any question as to the title of the State of Wyoming by court action or otherwise, and therefore applicant proposes, as follows:

That the Governor of the State of Wyoming, as president of the State Board of Land Commissioners, and the Commissioner of Public Lands as Secretary of such Board, shall forthwith execute and deliver, in the manner provided by law and applicable regulations, to Ohio, for and on behalf of the State, an oil and gas lease to the Southeast Quarter and the West Half (SE¼ and W½) of Section 36, Township 58 North, Range 100 West of the Sixth Principal Meridian, Park County, Wyoming, in the form hereto attached.

That upon delivery of said lease to Ohio, Ohio will and does hereby agree to:

(a) Indemnify and hold harmless the State from and against all loss, damage, claim, cost or expense arising or to arise from or out of any claim asserted or to be asserted by the United States in connection with any and all royalties which the Ohio has heretofore paid, or may hereafter pay, to the State upon the oil and gas produced from said Section 36.

(b) Pay upon demand of the State, through its Attorney General, all costs and expenses, (not including, however, any attorney's fees except such fees as Ohio has by special written consent agreed to pay) of suit or suits which the State may bring, or which it may defend, involving its rights in or title to said Section 36, or to any part thereof, whether

the Ohio is or becomes a party thereto or not; that it will also pay upon demand as aforesaid all expenses which may be reasonably necessary in investigating the State's right in or title to said Section 36 and in assembling evidence in support thereof; provided, however, no such expenses shall be incurred by the State without first obtaining the Ohio's written authorization therefor.

(c) Waive and release the State from any and all claims for refund, reimbursement, damages or otherwise which it may now or hereafter have connected with or growing out of its lease, or renewals thereof, to the Northeast Quarter (NE¼) of said Section 36, or upon the lease, if same is granted to it, on the remaining part of Section 36 should it be determined that the State has no right of possession or title to said Section 36 or right to lease said land or enter into said leases, or either of them.

(d) It is understood and agreed that the costs and expense of suit referred to in paragraph (b) hereof applies to all trial and appellate courts, as well as hearings and appeals in all proceedings before United States officers and departments.

[fol. 514] Ohio further states that it will upon request execute and deliver to the State for execution by the State an agreement embodying the terms of this supplemental application concurrent with and upon delivery of the lease to the lands in said application and in this supplement described.

This is filed as a supplement to and shall become a part of Application No. 3553.

Dated this 28th day of August, 1943.

The Ohio Oil Company, (S.) by A. Baker, Assistant Secretary. (Seal.)

Witnesses: (S.) Hal M. Stewart, W. H. Everett.

Received 1943 Aug 30 PM 3 58. Commissioner of Public Lands, State of Wyoming.

[fol. 515] July 16, 1943.

DEAR MR. BAKER:

Your letter of July 13th, accompanied by application of the Ohio Oil Company for oil and gas lease on the W½:SE¼ Section 36, Township 58, Range 100, also a $141.00 remittance has been received.

The application will be filed and action suspended while the question of title is pending. We now have on file Application 48102 of Jacob A. Watson covering the SE¼, and Application 2062 B—Wilfred O'Leary, covering the W½: SE¼.

Very truly yours, Harold W. Kilian, Deputy Commissioner.

JR/bw.

Ohio Oil Company, Box 120, Casper, Wyoming.
Attention: A. Baker.

[fol. 516] THE OHIO OIL CO.

Casper, Wyoming

A. Baker, Assistant Secretary.

Registered Mail.

July 13, 1943.

Commissioner of Public Lands, Cheyenne, Wyoming.

MY DEAR MR. COMMISSIONER:

Attached is the application of The Ohio Oil Company for oil and gas lease on W½ and SE¼ Sec. 36, T. 58 N., R. 100 W.; also, our check for $141.00 which I understand is the required amount to cover the first yearly rental of $120.00, application and lease fees $11.00, and cash bond $10.00. It i possible that on account of the title of the State to this land being questioned by the United States, your office or the Board may not feel in position to issue an oil and gas lease at this time. In that event it is requested that the application be filed and be given a proper number

and priority and that you confirm such action, and if the application is to be held in suspense that you advise us of that action.

Yours very truly, The Ohio Oil Company, by (S.) A. Baker, Assistant Secretary.

Received Jul. 16 AM 8 58. Commissioner of Public Lands, State of Wyoming.

AB/hks.
attachment
Reg. #.

Address your reply to A. Baker, Box 120, Casper, Wyoming.

(Here follows 2 Photolithographs, side folios 517, 518-519)

Form—App. No. 99
Jan. 1938—25C.

State of Wyoming

APPLICATION FOR MINERAL LEASE

TO THE COMMISSIONER OF PUBLIC LANDS, STATE OF WYOMING, CHEYENNE:

In accordance with the Laws of the State of Wyoming and the Rules and Regulations governing the issuance of Mineral Leases made and established by the Board of Land Commissioners, application is hereby made to lease, for the purpose of prospecting for, developing, producing and marketing of oil and gas (Name of Mineral), the following described state lands, to-wit:

Description of Subdivision of Section	Section	Township	Range	Acres
W½ and SE¼	36	58 N.,	100 W.,	480
			3553 B.	

Located in Park County

1. Name: The Ohio Oil Company Address: Box 120 Box or Street No.
City of Casper, Wyoming State of Wyoming

(If a firm or association give all names and addresses of interested parties.)

2. If a corporation, fill out the following:
Organized under the Laws of the State of Ohio
Is qualified under Wyoming Laws to transact business in Wyoming and is now in good standing. Yes Yes
No Name of Resident Agent A. Baker, Asst-Secretary Address Box 120 - Casper, Wyo.
[redacted] Secretary, Box 120, Casper, Wyoming

4. I hold the following mineral leases from the State of Wyoming: A number of producing leases on which applicant has discovered oil and gas and paid the State over three million dollars in royalty including Lease 0-1875 for the NE¼ of this Section 36

(Give serial number and kind of lease)

Applicant has executed the oil for oil

(Give serial number and kind of lease)

6. I have caused a personal examination of the above lands to be made by Applicant has operated the NE¼ for oil and gas for over 25 years and has well and other valuable improvements thereon. and found the lands to be in the following condition: It is understood the title of the state is questioned by the United States. If for that reason the Board does not feel disposed to issue an oil and gas lease it is requested that this application for lease be filed in the regular manner and that action be suspended thereon and improvements located thereon as follows:

(Describe nature of lands, cultivation, water and all improvements, including fences, buildings, wells, shafts, dams, ditches, roads, etc., and location of such, using map or plat if necessary.)

The improvements are owned by

The above lands are in the possession of

I intend to prospect and develop the said lands in the following manner: Carry on exploratory work for the recovery and production of oil and gas.

at an estimated expenditure of $ 100,000

I remit herewith $ 141.00 to cover the fees and one year's advance rental required by law.

(If application is for a metalliferous lease, state whether lode or placer)

IMPORTANT! This application cannot be considered prior to receipt of above remittance.

Signed in the presence of witnesses this 12th day of July, A. D. 1943

WITNESSES:

Helen Sutherland /s/

Dorothy Cameron /s/

THE OHIO OIL COMPANY

By: A. Baker /s/

Asst. Secretary

Applicant—Sign FULL name here

An additional remittance was paid in connection with the supplemental application—$360.00 rental—$1.00 filing fee Total remitted - $502.00

REMITTANCE TO ACCOMPANY APPLICATION:

For Oil and Gas Lease: Fees—$11.00; 1st Year Rental 25c per acre: Bond to be furnished later.
For Coal Lease: Fees—$11.00: 1st Year Rental $50.00: Bond to be furnished later.
For Gold, Bentonite or other Mineral Lease: Fees—$11.00: 1st Year Rental $50.00: Bond to be furnished later.

NOTE—Use reverse of application where sufficient space for information is not provided.

S-331

517

3664

Not Leased for grazing
(Title Pending)

Application No. 3553 B,
Lease No. 0-2085

Wyoming Application for Miner Lease

OIL AND GAS
(Name of Mineral)

The Ohio Oil Company

Address: Box 120
Casper, Wyoming.

Fund: COMMON SCHOOL

County: PARK

On Receipt-"Application filed and action suspended while question of title is pending."

BOARD: NOVEMBER 15, 1943 (Sp
Allowed at $480.00
From November 16, 1943
To Expire November 15, 1953
First Rental payment . . . $
Filing and Recording Fees. $
Bond - $10,000.00

518-57

Lease No. 40850 - Jacob A. Watson
COMMON SCHOOL 160 Acres PARK COUNTY
Expired February 1, 1930. (SE¼)

Pt.Lease No.23628 N.J. Battenschlag
COMMON SCHOOL 320 Acres PARK COUNTY
Canceled June 17, 1920. (W½).

ACRES	DESCRIPTION	SEC.	TP.	RG.
480	W½:SE¼	36	58	100

OFFICE USE ONLY

Funds received with applicatio
Deposits on Mineral Applications 9/2/4
Rentals on books $
Improvements
CASH BOND
Recording fees on books
Supplemental App.-Used 9/2/43
Filing fee
Total (Applicant's check)

DISPOSITION

Filing fee credited July 20, 19
Returned to applicant Nov. 19-194
Amount $10.00

Examined JR

3553 B,
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RECEIVED
1943 JUL 16 AM 8 58
COMMISSIONER
OF PUBLIC LANDS
STATE OF WYOMING

1943(Spec.Meeting)

943
15, 1953
t . . . $480.00
g Fees. $ 11.00

E ONLY
ith application
tions 9/2/43 360.00 Balance of rental

	~~$ 120.00~~	
	10.00	
	10.00	
ed 9/2/43	1.00	
	1.00	
	~~141.00~~	
TION	502.00	

ly 20, 1943
v. 19-1943

518-519

[fol. 520] PLAINTIFF'S EXHIBIT 91

AGREEMENT

This Agreement, made and entered into this 16th day of November, 1943, by and between the State of Wyoming, acting by and through its Board of Land Commissioners, party of the first part, and The Ohio Oil Company, an Ohio corporation, hereinafter referred to as "Ohio", party of the second part, Witnesseth:

Whereas, Ohio has heretofore made application to the State of Wyoming for oil and gas lease cover- the West Half (W½) and the Southeast Quarter (SE¼) of Section Thirty-six (36), Township Fifty-eight (58) North, Range One Hundred (100) West, containing 480 acres, more or less, in Park County, Wyoming, said application being designated Application No. 3553, and Ohio has filed with the proper officers of the State of Wyoming a supplement to said application dated August 28, 1943;

And Whereas, at the time of the execution of this instrument by and for the State, the State of Wyoming, acting by and through its Board of Land Commissioners, has executed and delivered unto Ohio an oil and gas lease pursuant to said application, said lease being dated the 16th day of November, 1943;

And Whereas, pursuant to the terms and provisions of said supplemental application the parties hereto desire to embody herein the terms of said supplemental application,

Now, Therefore, Ohio agrees that it will assist the State of Wyoming in attempting to eliminate any question as to the title of the State of Wyoming to the land above-described, by court action or otherwise, and Ohio does hereby agree to:

(a) Indemnify and hold harmless the State from and against all loss, damage, claim, cost or expense arising or to arise from or out of any claim asserted or to be asserted by the United States in connection with any and all royalties which the Ohio has heretofore paid, or may hereafter pay, to the State upon the oil and gas produced from said Section 36.

(b) Pay upon demand of the State, through its Attorney General, all costs and expenses, (not including, however, any attorney's fees except such fees as Ohio has by special written consent agreed to pay) of suit or suits

[fol. 520] PLAINTIFF'S EXHIBIT 91

AGREEMENT

This Agreement, made and entered into this 16th day of November, 1943, by and between the State of Wyoming, acting by and through its Board of Land Commissioners, party of the first part, and The Ohio Oil Company, an Ohio corporation, hereinafter referred to as "Ohio", party of the second part, Witnesseth:

Whereas, Ohio has heretofore made application to the State of Wyoming for oil and gas lease cover- the West Half (W½) and the Southeast Quarter (SE¼) of Section Thirty-six (36), Township Fifty-eight (58) North, Range One Hundred (100) West, containing 480 acres, more or less, in Park County, Wyoming, said application being designated Application No. 3553, and Ohio has filed with the proper officers of the State of Wyoming a supplement to said application dated August 28, 1943;

And Whereas, at the time of the execution of this instrument by and for the State, the State of Wyoming, acting by and through its Board of Land Commissioners, has executed and delivered unto Ohio an oil and gas lease pursuant to said application, said lease being dated the 16th day of November, 1943;

And Whereas, pursuant to the terms and provisions of said supplemental application the parties hereto desire to embody herein the terms of said supplemental application,

Now, Therefore, Ohio agrees that it will assist the State of Wyoming in attempting to eliminate any question as to the title of the State of Wyoming to the land above-described, by court action or otherwise, and Ohio does hereby agree to:

(a) Indemnify and hold harmless the State from and against all loss, damage, claim, cost or expense arising or to arise from or out of any claim asserted or to be asserted by the United States in connection with any and all royalties which the Ohio has heretofore paid, or may hereafter pay, to the State upon the oil and gas produced from said Section 36.

(b) Pay upon demand of the State, through its Attorney General, all costs and expenses, (not including, however, any attorney's fees except such fees as Ohio has by special written consent agreed to pay) of suit or suits

which the State may bring, or which it may defend, involving its rights in or title to said Section 36, or to any part thereof, whether the Ohio is or becomes a party thereto or not; that it will also pay upon demand as aforesaid all expenses which may be reasonably necessary in investigating the State's right in or title to said Section 36 and in assembling evidence in support thereof; provided, however, no such expenses shall be incurred by the State without first obtaining the Ohio's written authorization therefor.

(c) Waive and release the State from any and all claims for refund, reimbursement, damages or otherwise which it may now or hereafter have connected with or growing out of its lease, or renewals thereof, to the Northeast Quarter (NE¼) of said Section 36, or upon the lease, if same is granted to it, on the remaining part of Section 36 should it be determined that the State has no right of possession or title to said Section 36 or right to lease said land or enter into said leases, or either of them.

(d) It is understood and agreed that the costs and expense of suit referred to in paragraph (b) hereof applies to all trial and appellate courts, as well as hearings and appeals in all proceedings before United States officers and departments.

In Witness Whereof, the State of Wyoming has caused these presents to be signed by the Governor, President of the Board of Land Commissioners, countersigned by the [fol. 521] Commissioner of Public Lands, Secretary of the Board of Land Commissioners, and the seal of the Board to be affixed, and the said The Ohio Oil Company has caused these presents to be properly executed by its corporate officers and its corporate seal to be affixed the day and year first hereinabove written.

State of Wyoming, acting by and through its Board of Land Commissioners, By Lester C. Hunt, Governor—President, Board of Land Commissioners. Witness: Harold W. Kilian. Countersigned: Orcord Natnick, Commissioner of Public Lands—Secretary. Witness: ——— ———. The Ohio Oil Company, By ——— ———, Vice-President. Attest: E. M. Redpath, Secretary.

Approved as to form and execution, Nov. 19, 1943, Louis J. O'Marr, Attorney General.

[fol. 522] Bond of Lessee

Whereas, The Ohio Oil Company was on the 16th day of November, A. D. 1943 granted oil and gas lease Serial No. O-2085 under the provisions of Article 8, Chapter 91, Wyoming Revised Statutes, 1931, upon Southeast Quarter (SE¼) and the West One-Half (W½) of Section Thirty-six (36), Township Fifty-eight (58) North, Range One Hundred (100) West of the Sixth (6th) Principal Meridian, conditioned upon an annual payment of advance rental of $480.00, and other conditions as more particularly specified in said lease.

Now, Therefore, Know All Men by These Presents: That we, The Ohio Oil Company, as principal, the lessee, and The Ohio Casualty Insurance Company a surety company authorized to do business in the State of Wyoming, are held and firmly bound unto the State of Wyoming in the sum of Ten Thousand & no/100 Dollars ($10,000.) lawful money of the United States, to be paid to the Commissioner of Public Lands, as agent for the State of Wyoming, to which payment well and truly to be made, we bind ourselves, successors and assigns, jointly and severally, firmly by these presents.

The condition of the above obligation is such that if the above bounden principal shall at the specified times make payments of all moneys, rentals and royalties provided for by the terms of said lease, and fully comply with and observe all the valid Rules and Regulations made and established by the Board of Land Commissioners, and shall in all things stand to, and abide by, and well and truly keep and perform the covenants, conditions, terms and agreements, and each and every one of them, and every part thereof, which are contained in a certain Indenture of lease, entered into between the State of Wyoming, acting by and through its Board of Land Commissioners, lessor, and the principal person, the lessee, bearing the date and Serial Number given above, covering the above described land, and shall not permit any loss, nor commit or cause to be committed any waste in, to or upon said premises, and shall surrender and vacate said premises unless said lessee shall became purchaser of said land within thirty days after cancellation or expiration of the term of said lease, and shall comply with all provisions of the law in the premises, then the above obligation shall be void, else

to remain in full force and virtue until such time as the said obligations thereunder are fulfilled to the satisfaction of the Commissioner of Public Lands.

Signed by us and sealed with our seals this 16th day of November A. D. 1943.

The Ohio Oil Company, Principal Lessee, By ——— ——, Vice-President. Witness: R. McClain. (Seal.)

Attest: E. W. Redpath, Secretary.

The Ohio Casualty Insurance Company, Bonding Company, by Albert M. Ehlers, Its Attorney-in-Fact. —— ——. Resident Agent: Herbert V. Towle, Cheyenne, Wyoming. Corporate Seal of Bonding Company must be affixed.

Approved as to form and execution: Louis J. O'Marr, Attorney General. By: —— ——, Deputy. Date: Nov. 19, 1943. Approved by Board: Dec. 2, 1943. Examined: HWT. Amended M-36. 7-1936

[fol. 523] Affidavit of Attorney-in-Fact for Surety

State of Colorado,
County of Denver, ss:

On this 16th day of November, A. D. 1943, before me personally appeared Albert M. Ehlers, Attorney-in-fact, of The Ohio Casualty Insurance Company, with whom I am personally acquainted, who being by me duly sworn, did depose and say, that he resides in Denver, Colorado; that he is the Attorney-in-fact of The Ohio Casualty Insurance Company, the corporation named in and which executed the within instrument; that he knows the corporate seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed and executed the said instrument as Attorney-in-fact of said corporation by like order.

My Commission expires March 30, 1947.

Elizabeth Bassett, Notary Public.

[fol. 524] Power of Attorney

The Ohio Casualty Insurance Company
Home Office, Hamilton, Ohio

Know all men by these presents: That The Ohio Casualty Insurance Company, in pursuance of authority granted by Article VI, Section 5 of the By-Laws of said Company, reading as follows:

> "The President, any Vice-President, the Secretary, or any Assistant Secretary shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Resident Vice-President or Resident Assistant Secretary or to appoint Attorneys-in-fact for the purpose of signing the name of the Company as Surety to, and to execute, attach the corporate seal, acknowledge and deliver any and all bonds, recognizances, stipulations, undertakings or other instruments of suretyship and policies of insurance to be given in favor of any individual, firm, corporation or the official representative thereof, or to any County or State, or any official Board or Boards of County or State, or to the United States of America, or to any other political subdivision."

does hereby nominate, constitute and appoint: Albert M. Ehlers of Denver, Colorado, its true and lawful agent and attorney-in-fact, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all bonds, recognizances, stipulations or undertakings, not exceeding in any single instance, Twenty-Five Thousand ($25,000.00) Dollars.

The authority hereby granted will expire two (2) years from the date hereof, unless sooner revoked.

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Hamilton, Ohio, in their own proper persons.

In witness whereof, Frank R. King, Vice-President of the said The Ohio Casualty Insurance Company has hereunto subscribed his name and affixed the Corporate Seal

of the said The Ohio Casualty Insurance Company this 15th day of August, 1943.

Frank R. King, Vice-President.

STATE OF OHIO,
County of Butler, ss:

On this 15th day of August, A. D. 1943, before the subscriber, a Notary Public of the State of Ohio, in and for the County of Butler, duly commissioned and qualified, came Frank R. King, Vice-President of The Ohio Casualty Insurance Company, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn deposeth and saith, that he is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer was duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

In testimony whereof, I have hereunto set my hand and affixed my Official Seal at the City of Hamilton, State of Ohio, the day and year first above written.

Arthur G. Wulzen, Notary Public. My commission expires July 11, 1944.

[fol. 525] Oil and Gas Lease

This indenture of lease entered into in triplicate this 16th day of November, A. D. 1943, by and between the State of Wyoming, acting by and through its Board of Land Commissioners, party of the first part, hereinafter called the lessor, and The Ohio Oil Company, party of the second part, hereinafter called the lessee.

Sec. 1. Purposes. That the lessor, in consideration of the rents and royalties to be paid and the covenants and agreements hereinafter contained and to be performed by the lessee, does hereby grant and lease to the lessee the exclusive right and privilege to drill for, mine, extract, remove and dispose of all of the oil and gas and other kindred hydrocarbon deposits (the term "gas" as used in this section shall be interpreted to include natural gas, casinghead gasoline, drip gasoline and natural-gas gasoline extracted

from natural gas) in or under the following described land, to-wit:

> Southeast Quarter (SE¼) and the West One-Half (W½) of Section Thirty-six (36), Township Fifty-eight (58) North, Range One Hundred (100) West of the Sixth (6th) Principal Meridian, containing four hundred eighty (480) acres, more or less, in Park County, Elk Basin Field, State of Wyoming.

together with the right to construct and maintain thereon all works, buildings, plants, waterways, roads, communication lines, pipe lines, reservoirs, tanks, pumping stations, or other structures necessary to the full enjoyment thereof, subject, however, to the conditions hereinafter set forth.

Sec. 2. Term of Lease. This lease, unless terminated at an earlier date as hereinafter provided, shall remain in force and effect for a term of ten (10) years from and after the date hereof (expiring at midnight on the 15th day of November, A. D. 1953), with the right of renewal in accordance with Section 801, Chapter 91, Wyoming Revised Statutes, 1931.

Sec. 3. In consideration of the foregoing the lessee covenants and agrees:

(a) Bond. To furnish a bond with an approved corporate surety company authorized to transact business in the State of Wyoming, or such other surety as may be acceptable to the lessor, in the penal sum of Ten Thousand Dollars, ($10,000.00), conditioned upon the payment of all moneys, rentals and royalties accruing to the lessor under the terms hereof, and upon the full compliance of all other terms and conditions of this lease and the Rules and Regulations relating thereto, and also conditioned on the payment of all damages to the surface and improvements thereon where the lease covers lands, the surface of which has been sold or otherwise leased. Such bond or bonds furnished prior to the development of the lands contained in this lease may be increased in such reasonable amounts as the lessor may decide, upon commencement of actual drilling and after the discovery of oil or gas.

(b) Payments. To make all payments accruing hereunder to the Commissioner of Public Lands, Capitol Building, Cheyenne, Wyoming.

(c) Rentals. Prior to the discovery of oil or gas in paying quantities by the lessee to pay the lessor in advance, beginning with the effective date hereof, an annual rental of Four Hundred Eighty Dollars ($480.00) unless changed by agreement. Such rental so paid for any one year shall be credited on the royalty for that year.

(d) Royalties. To pay the following royalties on oil, gas, natural gasoline and other kindred hydrocarbons produced by the lessee from the lands herein leased, in kind or in value as the lessor may elect:

On Oil: (1) When the price of oil used in computing royalty value is $1.00 or more per barrel, the percentum of royalty shall be as follows:

When the average production for the calendar month in barrels per well per day is—

Not over 100, the royalty shall be 12.5 per cent.

Over 100 but not over 500, the royalty shall be 16⅔ per cent.

Over 500, the royalty shall be 25 per cent.

(2) When the price of oil used in computing royalty value is less than $1.00 per barrel, the percentum of royalty shall be the foregoing, multiplied by the ratio of said price to a price of $1.00 per barrel;

Provided, however, that the percentum of royalty shall never be less than 12.5.

(3) If the State of Wyoming shall take its royalties in oil, the price received by the lessee, as well as that received by the lessor, shall be considered in determining the price to govern the percentum of royalty, unless both prices are $1.00 or more per barrel.

[fol. 526] On Gas: On all gas produced and marketed from the property twelve and one-half per cent.

On Natural Gasoline: Twelve and one-half (12½) per cent of thirty-three & one-third (33⅓) of the amount or value of the natural gasoline extracted, or recovered.

On Other Kindred Hydrocarbons: On all other hydrocarbons of value produced or extracted, including propane and butane, at such royalty as shall be mutually determined to be fair and reasonable.

For royalty purposes on gas and natural gasoline the value shall be as approved by the lessor, and in the determination of the value for natural gasoline the fair cost of extraction shall be considered as a deductible item; provided, however, that the allowance for the cost of extraction may exceed two-thirds of the amount or value only on approval of the lessor and in no event shall the price for gas, or natural gasoline, be less than that received by the United States of America for its royalties from the same field.

In cases where natural gas is produced and the natural-gas gasoline extracted therefrom only one royalty shall be paid, except in the event the residue or dry gas shall be marketed it shall then constitute a separate commodity and a royalty shall be paid thereon as above provided.

Natural gas actually used for operating purposes upon the land and gas returned to said land for stimulating the production of oil shall be royalty free.

(e) Disposition of Royalty Oil. To deliver to the lessor, or to such individual, firm or corporation as the lessor may designate, all royalty oil and gas free of charge on the premises where produced; or, at the option of the lessor, and in lieu of said royalties in kind, the lessee agrees to pay the lessor the field market price or value of all royalty oil produced and saved.

When the lessor elects to take its royalty oil in kind, such oil shall be good merchantable oil, and the lessee shall if necessary furnish storage therefor free of charge for thirty (30) days after the end of the calendar month in which the oil is produced, upon the leased premises, or at such place as the lessor and the lessee may mutually agree upon, provided, however, that the lessee shall not be held liable for loss or destruction of royalty oil so stored from causes beyond his control.

The free storage of oil as agreed upon by the last above paragraph, to apply only as long as the said oil is the property of the lessor.

(f) Measurements of Production. To gauge, measure and correct for temperature all production from said lands in conformance with the Rules and Regulations adopted by the Board of Land Commissioners and report said production to the lessor in accordance therewith.

To keep books, records and reports pertaining to the production from the land herein leased as well as those pertaining to the production from offset wells operated by the lessee, his operator or sub-lessee, on other lands, which shall be opened at all times for the inspection of any duly authorized agent of the lessor.

To furnish the lessor with original pipe line reports showing the day, month, year, amount, gravities and temperatures of all oil run and with monthly reports showing the month, year, amount and price at which all gas and natural-gas gasoline produced from the land herein leased was sold.

(g) Monthly Payments and Statements. To make payment on or before the twentieth (20th) day of the calendar month succeeding the month of production for all oil or gas produced from said land, and to furnish sworn monthly statements therewith showing in detail the quantity and quality of the production (per well if required where practical) from the land hereby leased, and the quantity and the quality of the production (per well where practical) from offset wells upon cornering or contiguous lands operated by the lessee, his operator or sub-lessee, and such other information as may be called for in the form of report prescribed by the lessor.

(h) Development Prior to Discovery. Within six months after the State's title to the above described lands is no longer questioned by the United States or anyone claiming by, through or under it, to erect on the leased premises a good and sufficient drilling rig and equipment and commence the actual drilling of a well to properly test the structure; provided, that the lessor may, upon proper application by the lessee in writing, made prior to the expiration of the aforesaid date, grant relief from the above [fol. 527] drilling requirements in such manner and for such period of time as conditions may warrant, and which appear to be to the best interests of the State.

(i) Wells to be Drilled. To drill and operate effectively all wells necessary to reasonably offset wells upon and production from adjoining lands.

To drill such additional wells at such times or places as are necessary and essential to the proper development and commercial production of the oil and gas content of said land.

(j) Log of Wells and Reports. To keep a log, in the form approved by the lessor, of all the wells drilled by the lessee on the lands herein leased, showing the strata and character of the formations, water sands and mineral deposits penetrated by the drill, amount of casing, size and where set, and such other information as the lessor may require, which log or a copy thereof shall be furnished to the lessor.

To file progress reports, in the form prescribed by the lessor, at the end of each thirty (30) day period while each well is being drilled.

To file annually, or at such times as the lessor may require, maps showing the development of the structure and the location of all wells, pipe lines and other works used in connection with the operations of the lessee upon said land.

To make such other reports pertaining to the production and operations by the lessee on said land as may be called for by the lessor.

(k) Production. To operate the wells upon the land herein leased in a competent and efficient manner in an endeavor to recover all the oil and gas economically possible from said land, and to prevent the undue drainage of the oil and gas thereunder by wells operated by the lessee or others on cornering or contiguous lands to those leased herein. All plans or methods for the purpose of stimulating or increasing production on lands herein leased other than those in common use shall first be presented to the lessor for approval before being put into actual operation.

(l) Diligence—Prevention of Waste. To exercise reasonable diligence in drilling, producing, and operating of wells on the land covered hereby, unless consent to suspend operations temporarily is granted by the lessor; to carry on all operations hereunder in a good and workmanlike manner in accordance with approved methods and practice, having due regard for the prevention of waste of oil and gas, or the entrance of water to the oil or gas bearing sands or strata to the destruction or injury of such deposits, the preservation and conservation of the property for future productive operations, and to the health and safety of workmen and employees; to plug securely in an approved manner any well before abandoning it, and not to abandon any well without permission of the lessor; not to drill any well

within two hundred (200) feet of any of the outer boundaries of the land covered hereby, unless to protect against drainage by wells drilled on lands adjoining less than 200 feet from the property lines thereof; to conduct all operations subject to the inspection of the lessor; to carry out at the lessee's expense all reasonable orders and requirements of the lessor relative to the prevention of waste and preservation of the property, and the health and safety of workmen, and on failure of the lessee so to do the lessor shall have the right, together with other recourse herein provided, to enter on the property to repair damages or prevent waste at the lessee's expense; to abide by and conform to valid applicable regulations prescribed; to reimburse the owner of the surface, if other than the lessor, or lessee of grazing rights thereof for actual damages thereto and injury to improvements thereon; provided, that the lessee shall not be held responsible for acts of providence or actions beyond his control.

(m) Taxes and Wages—Freedom of Purchase. To pay, when due, all taxes lawfully assessed and levied under the laws of the State of Wyoming upon improvements, oil and gas produced from the land hereunder, or other rights, property or assets of the lessee; to accord all workmen and employees complete freedom of purchase, and to pay all wages due workmen and employees at least once each month in the lawful money of the United States.

(n) Statutory Requirements and Regulations. To comply with all valid State statutory requirements and valid regulations thereunder, including Wyoming Blue Sky Law. (Chapter 13 sections 13-101 to 13-116 inclusive, Wyoming Compiled Statutes 1931 and amendments thereto.)

(o) Assignments of Lease—Production Agreements. Not to assign this lease or any interest therein, nor sub-let any portion of the leased premises, except with the consent in writing of the lessor first had and obtained.

All over-riding royalties to be valid must have the approval of the Board and be recorded with the lease. The Board reserves the right of disapproval of such over-riding royalties when in its opinion they become excessive and hence are detrimental to the proper development of the leased lands.

No production agreements limiting, restricting, prorating, or otherwise affecting the natural production from said land shall be entered into by the lessee, nor shall the lessee limit, restrict or prorate the natural production from said land in any way or in any event, except with the consent in writing of the lessor first had and obtained.

(p) Deliver Premises in Cases of Forfeiture. To deliver up the leased premises, with all permanent improvements thereon, in good order and condition in case of forfeiture of this lease; but this shall not be construed to prevent the removal, alteration or renewal of equipment and improvements in the ordinary course of operations.

(q) Regulations. To conduct all operations under this lease in accordance with the valid Rules and Regulations governing the production of oil and gas which may now or hereafter be approved by the lessor.

Sec. 4. The Lessor Expressly Reserves:

(a) Disposition of Surface. The right to lease, sell or otherwise dispose of the surface of the land embraced within this lease under existing laws or laws hereafter enacted, or in accordance with the Rules of the Board of Land Commissioners, insofar as the surface is not necessary for the use of the lessee in the extraction and removal of the oil and gas therein.

(b) Rights of Way and Easements. From the operation of this lease all lands heretofore granted for Rights of Way and Easements and reserves the right to grant such other Rights of Way and Easements as provided by the Statutes of the State of Wyoming, as long as such Rights of Way and Easements do not conflict with the operations for oil and gas on the land herein leased.

(c) The right, upon application of the lessee for the inclusion of the herein leased lands in a unit or co-operative plan of development, to establish, alter, change, or revoke the drilling, producing, and royalty requirements to conform therewith.

(d) The right to alter or modify the quantity and rate of production to the end that waste may be eliminated or that production may conform to the lessee's fair share of

allowable production under any system of State or national curtailment and proration authorized by law.

Sec. 5. Appraisal of Improvements. Upon the expiration of this lease, or earlier termination thereof pursuant to surrender or forfeiture, or if such land shall be leased to another other than the owner of the improvements thereon, the lessee agrees that the improvements shall be disposed of pursuant to Section 804, Chapter 91, Wyoming Revised Statutes of 1931, and amendments thereto.

Sec. 6. Forfeiture Clause. In the event that the lessee shall have procured this lease through fraud, misrepresentation or deceit, then in that event this agreement, at the option of the lessor, shall cease and terminate and shall become ipso facto null and void, and all improvements upon said land or premises under the terms of this lease shall forfeit to and become the property of the State of Wyoming. In the event that the lessee shall fail to make payments of rentals and royalties as herein provided, or make default in the performance or observance of any of the terms, covenants and stipulations hereof, or of the general regulations promulgated by the Board of Land Commissioners and in force on the date hereof, the lessor shall serve notice of such failure or default, either by personal service or by registered mail upon the lessee, and if such failure or default continues for a period of thirty (30) days after the service of such notice, then and in that event the lessor may, at its option, declare a forfeiture and cancel this lease, whereupon all rights and privileges obtained by the lessee hereunder shall terminate and cease and the lessor may re-enter and take possession of said premises or any part thereof; but these provisions shall not be construed to prevent the exercise by the lessor of any legal or equitable remedy which the lessor might otherwise have. A waiver of any particular cause of forfeiture shall not prevent the cancellation and forfeiture of this lease for any other cause of forfeiture, or for the same cause occurring at any other time.

Sec. 7. Surrender. Upon the further consideration and payment of $10.00 and payment of the filing and recording fees, the lessee may upon sixty (60) days notice in writing to the lessor, surrender the lease or any legal subdivision thereof, providing all obligations under the terms of this

lease at the date of the relinquishment have been fully complied with by the lessee, and that if no development has taken place during the life of this lease such lease may be surrendered upon the payment of the required fees. The abandonment of any and all wells on the relinquished property shall be subject to mutual agreement.

Sec. 8. Heirs and Successors in Interest. It is further covenanted and agreed that each obligation hereunder shall extend to and be binding upon, and every benefit hereof shall inure to the heirs, executors administrators, successors of, or assigns of the respective parties hereto.

Sec. 9. This lease is issued by virtue of and under the authority conferred by Chapter 91, Wyoming Revised Statutes, 1931, and is accepted by the lessee subject thereto. Lessor does not warrant title and this lease is subject to an agreement of even date herewith, by and between The Ohio Oil Company and the State of Wyoming.

[fol. 528] In Witness Whereof, the said lessor has caused these presents to be signed by the Governor, President of the Board of Land Commissioners, countersigned by the Commissioner of Public Lands, Secretary of the Board of Land Commissioners, and the seal of the Board to be affixed, and the lessee has caused these presents to be signed and sealed in the manner following.

Lessor: State of Wyoming, acting by and through its Board of Land Commissioners, By Lester C. Hunt, Governor—President, Board of Land Commissioners. Witness: Harold W. Kilian. Countersigned: Orcord Natnick, Commissioner of Public Lands—Secretary. Witness: —— ——.

Lessee: The Ohio Oil Company, By ——— ———, Vice-President. Approved as to Form and execution Nov. Nov. 19, 1943. Louis J. O'Marr, Attorney General, By John J. McIntyre, Deputy Attorney General. Attest: E. M. Redpath, Secretary.

Form approved by Board: April 4, 1940. Lease and bond approved by Board: Nov. 15, 1943. Examined: Dec. 2, 1943. HWK.

[fol. 529] Lease No. O-2085. Application No. 3553 B. Oil and Gas Lease. Lessee: The Ohio Oil Company, Box

120. Address: Casper, Wyoming. Expires: Nov. 15, 1953. Rental: $480.00. County: Park. Fund: Common School. Bond: $10,000.00. Record of Assignments: —. Description Plate: —. Acres: 480. Description: W½:SE¼.

[fol. 530] DEFENDANTS' EXHIBIT "A"

Statement of Expenditures, Earnings and Royalties Paid by the Defendant, The Ohio Oil Company

State Land Sec. 36, T. 58 N., R. 100 W. (Elk Basin Field) Wyoming

February, 1917 to January 1, 1945

[fol. 531] The Ohio Oil Company

Statement of Expenditures and Earnings

State Land Sec. 36-58-100, Elk Basin Field, Wyoming

Expenditures:

Capital	$118,628.84	
Operating Expense	70,083.73	
Taxes	4,317.40	
Overhead	22,461.00	
Total Expenditures		$215,490.97
Earnings After Royalty Payments		151,011.23
Royalty Paid	17,306.30	
Net Debit Standing		$64,479.74

Supporting Schedules Attached for the Following:

Schedule of Capital Expenditures.
Schedule of Direct Operating Expenses.
Schedule of Taxes Paid.
Schedule of Oil Runs.
Schedule of Gross Oil Runs showing price per barrel from November, 1917, to December 31, 1944, Inc.
Schedule of Elk Basin—Light Crude Oil prices from November 1, 1917, to December 31, 1944, inc.
Schedule of Overhead.

[fol. 532] **Capital Expenditures**

State Land Sec. 36-58-100, Elk Basin Field, Wyoming

Total Cost of Well No. 1	$16,904.22
2	24,457.40
3	25,738.67
4	29,835.54
5	48.50
Water Well No. 1	850.24
2	2,581.55
3	2,765.78
Lease Equipment	15,446.94
Total Capital Expenditures	$118,628.84

[fol. 533]

The Ohio Oil Company
Producing and Merchandising Department
Schedule of Capital Expenditures
State Land Sec. 36-58-100, Elk Basin Field, Wyoming

Well #1					
1917					
Feb.	Original Sub destroyed—See voucher analysis for charge ref.				100.00
July	6,220' 9"—2" line pipe—con. #1—@ 16¢ (for gas & water lines)				995.32
	502' 7"—2" line pipe—con. #1—@ 16¢ (for gas & water lines)				80.42
Nov.	2—1½" Tees	con. #1—@ 28¢ (connections at well)			.56
	2—1½" plugs	"	—@ 4¢	"	.08
	4—1½" stops	"	—@ 1.60	"	6.40
	2—1½" flange unions	"	—@ 1.30	"	2.60
	1—1½" st. ell	"		"	.25
	3—1½" nipples	"	—@ 18¢	"	.54
	1—1½" x 2" bushing	"	—@ 15¢	"	.15
	1—½" x 1" bushing	"		"	.10
	1—½" globe valve	"		"	1.20
	6—½" ells	"	—@ 5¢	"	.30
	1—½" st. ell	"		"	.05
	6—½" nipples	"	—@ 4¢	"	.24
	4—⅛" Asbestos met. paper	"	—@ 85¢	"	3.83
	2 Hacksaw blades	"	—@ 15¢	"	.30
	2—1" ells	"	—@ 13¢	"	.26
	1—1" check valve	"	—@	"	2.75
	1—2" iron stop	"		"	1.75
	1—2" flange union	"		"	.80
	1—1½" lip union	"		"	.60
	1—1½" x 4" nipple	"		"	.18
	1—1¼" com. ell	"		"	.18
	1—1¼" nipple	"		"	.14
	Voucher missing—see Well Farms. Invest. Summary Sheet				74.88
	Proportion of Elk Basin Camp Expense—Nov. (See vou. for detail)				11.36

Schedule of Capital Expenditures—Continued

1917				
Dec.	1—L.H.R.P. shovel	con. 1	(for use making road)	.90
	2—2″ plugs	"	—@ 4¢ (con. water tank)	.08
	1—2″ x 3″ bushing	"	"	.15
	160′ pine lumber	"	(wood conductor)	6.85
	7# Nails	"	"	.42
	Voucher missing—See Incomplete Well Invest. sheet			3.70
	2477″—12½″—45# casing—con. 1—@ 2.04 (casing well)			505.06
	1—12½″ collar	"	"	2.80
	1272′ 2″—10″—32# Casing—con. 1—@ 2.04			2,595.23
	1 set 10″ casing clamps	"		18.00
	1810′ 8″—8¼″—24# casing	"	—@ 1.70	3,078.14
	1—8¼″ reg. casing shoe	"		9.25
	1—8¼″ x 16″ casing nipple	"		5.00
	1 complete standard rig	con. 2		600.00
	Original subs destroyed—See voucher analysis for charge reference			82.62
	Hauling 8¼″ casing—1 da.			7.00
	Hauling calf wheel, casing & tubing—6 da. @ 7.00			42.00
	1 complete standard rig	con. 2		*800.00
	38′1″—12½″—45# Casing	con. 1	—@ 3.40	*129.47
	106′9″—10″—32# Casing	"	—@ 2.04	*217.77
	62′8″—8¼″—24# Casing	"	—@ 1.70	*106.54
	61′5″—6⅝″—17# Casing	"	—@ 90.3¢	*55.46
	27′—2″ tubing	"	—@ 27¢	*7.29
	25′—⅝″ sucker rods	"	—@ 9¢	*2.25
	2202′2″—6⅝″ casing	"	—@ 90.3¢	1,988.56
	1—6⅝″ casing shoe	"		25.42
	1 set 6⅝″ casing clamps	"		16.25
	1—6⅝″ x 36″ casing nipple	"		5.75
	120′ Pine lumber	"	(rig repairs)	6.60
	25′ surface rod pole	"	"	1.00
	1 set 8¼″ casing clamps	"		18.75
	2 sets 6⅝″ casing clamps	"	—@ 15.30	30.60
	1—6⅝″ x 8″ nipple	"		3.60
	1—6⅝″ casing head	"		25.42
	2205′11″—2″ tubing	"	—@ 27¢	595.60
	2175′—⅝″ sucker rods	"	—@ 9¢	195.75

[fol. 534]

Well #1				
	1—1¾″ x 5′ working barrel	con. 1		10.50
	1—1¾″ upper valve	"		3.75
	1—1¾″ lower valve	"		2.70
	1—⅝″ valve rod	"		.80
	1—Titus stuffing box	"		4.25
	1—1⅛″ Polish rod	"		4.50
	1—1⅛″ Polish rod clamp	"		.60
	1—Polish rod sub	"		.50
	1—2″ flange union	"		.75
	1# rubber rings			1.00
	2—2″ tees	"	—@ 33¢ (Well con.)	.66
	1—2″ plug	"	"	.04
	4—2″ nipples	"	—@ 20¢	.80
	1—2″ st. ell	"	"	.28
	3—2″ ells	"	—@ 28¢ "	.84
	Original subs destroyed—See voucher analysis for charge ref.			22.83
	Proportion of Elk Basin Camp Expense for Sept.			4.00
	1—12½″ com. drive shoe			56.31
	Hauling material			.40
	Proportion of Elk Basin Camp Expense for Oct.			4.50
	Drilling—2,185 ft. @ $3.50 per ft.			7,647.50

* Denotes red in copy.

	15 dys. use of men & tools, working on casing and cleaning out wells				539.00
	18'—12½" casing } Voucher pulled for Stewart—sent to Casper				
	166'—8¼" casing } See Incomplete Well Invest. sheet				343.53
	10 Qts. of nitro-glycerine & road time				127.40
	(Discount on 4—3" valves)				*2.28
	1—6⅝" Ell				*6.50
	1—6⅝" close nipple				*3.10
1918					
July	Hauling material during Nov. 1917				35.00
	4 gas mantles				1.00
	Proportion of Elk Basin Camp Expense—Dec.				*49.20
	Proportion of Elk Basin Camp Expense—Jan.				*75.20
1922					
Oct.	1—16 x 16 x 28 mainsill—	597'	Con. 2		
	1—16 x 16 x 18 sidesill—	384'	"		
	4—16 x 16 x 12 mudsill—	1024'	"		
	2—6 x 8 2 12 J. post braces	96'	"		*107.20
	2—16 x 16 x 5 J. post braces	213'	"		
	1—16 x 16 x 14 Samp. post	299'	"		
	2—6 x 6 x 11 Samp. post braces	66'	Con. 2 @ 40.00M		
	1—6 x 8 x 11 headache post	44'	Con. 2 @		
	1—14 x 28 x 24 walking beam	784'	Con. 2 @ 40.00		*33.18
	1—Pitman		Con. 2		*24.75
	1—Band wheel walking beam		Con. 2		*289.77
	1—Set rig irons		Con. 2		*1,155.00
	Total Cost—Well #1				16,904.22
Well #2					
1917					
Feb.	2 Bull wheels @ 75.00				*150.00
	1 Bull wheel shaft				*48.00
Nov.	71'3"—5-3/16"—13# casing—Con. 1—@ 84¢				*59.85
1918					
Jan.	Original subs destroyed—See voucher analysis for charge ref.				14.80
Feb.	Original subs destroyed—See voucher analysis for charge ref.				13.90
Mar.	Original subs destroyed—See voucher analysis for charge ref.				18.50
May	Original subs destroyed—See voucher analysis for charge ref.				5.00
June	4—1" tees	Con. 1—@ 15¢	Well connections		.60
	4—1" plugs	Con. 1—@ 3¢	"		.12
[fol. 535]					
Well #2					
1918					
	1—1" union	con. 1	Well connections		.40
	4—1" nipples	con. 1—@ 10¢	"		.40
	1—1" globe valve	con. 1	"		2.10
	1—1" x 2" bushing	con. 1			.10
	Original subs destroyed—See voucher analysis for charge ref.				16.50
July	Original subs destroyed—See voucher analysis for charge ref.				13.50
Sept.	Building road & hauling rig material—10 days @ 7.00				70.00
	Original subs destroyed—See voucher analysis for charge ref.				101.40
	27 Oak arms	con. 1—@ 90¢	Rig repairs		24.30
	100—1" Plain cants	" —@ 21¢	"		21.00
	16—2½" grooved B.W.cants	" —@ 51¢	"		8.16
	16—2½" plain B.W. cants	" —@ 49¢	"		7.84

* Denotes red in copy.

Schedule of Capital Expenditures—Continued

1918					
Sept.	48—1″ plain T.W. cants	"	—@ 21¢	"	10.08
	32 Pins	"	—@ 10¢	"	3.20
	410# nails	"	—@ 8¢	"	32.80
	7758 ft. pine lumber	"	—@ 60.00 M	"	465.48
	147 ft. pine lumber	"	—@ "	"	8.82
	6—1″ Plain B.W. cants	"	—@ 26¢	"	1.56
	15# nails	"	—@ 8¢	"	1.20
	210′ 8″—12½″ casing	"	—@ 3.60	"	758.40
	Hauling tank rig, pipe & oil to W#2—10 days @ 7.00				70.00
	Fuel—36 bbls. oil @ 1.85				66.60
	56.28 bbls. oil @ 1.70				95.67
	Original subs destroyed—See voucher analysis for charge ref.				29.25
	96′4″—12½″ casing	con.1	—@ 3.40		327.52
	309′10″—Corrugated iron	"			16.42
	24 ft. lumber	"	—@ 60.00 M—Rig repairs		1.44
	138# flat & round iron	"	—@ 8¢	"	11.04
	Rig bolts	"		"	3.60
	1 Ideal wrist pin	"		"	12.00
	16—2½″ grooved cants	"	—@ 41¢	"	6.56
	8—2½″ plain cants	"	—@ 39¢	"	3.12
	24—1″ plain cants	"	—@ 26¢	"	6.24
	60# nails	"	—@ 8¢	"	4.80
	1—10″ casing shoe	"			91.87
	348 ft. pine lumber	"	—@ 60.00 M	"	20.88
	1—5½″ x 16″ calf wheel shaft con. 1			"	62.21
	1520′ 11″—10¼″ casing 32# con. 1—@ 2.04				3,102.68
	38′ 1″—12½″—36# casing con. 2—@ 2.55				97.10
	90′ 10″—10¼″—32# casing con. 1—@ 2.04				185.29
	Hauling casing, water line & oil—10 days @ 7.00				70.00
	72 bbls. oil @ 1.85				133.20
	Original subs destroyed—See voucher analysis for charge ref.				132.70
	55 days use of water for drilling W#2 @ 10.00				550.00
	Labor repairing rig				310.00
	1—8¼″ casing clamp				58.20
	1 slide for 15″ comb. wrench				.65
	1 dog for 15″ comb. wrench				.30
	1—10″ casing shoe				91.87
	1—8¼″ casing shoe				79.33
	2114′ 11″—8¼″ casing con. 1—@ 1.95				4,124.09
	2414′ 11″—6⅝″ " " —@ 1.033				2,494.61
	143′ 5″—6⅝″ " con. 2 —@ 77¢				110.43
	3—8¼″ casing nipple con. 1 —@12.75				38.25
	1—6⅝″ drilling plug	"			4.75
	2—6⅝″ casing nipples	"			67.60
	1—6⅝″ casing clamp	"			58.20
	2436′ 4″—2″ tubing	"	—@ 38¢		925.81
	2400′—⅝″ sucker rods	"	—@ 10¢		240.00
	3—2″ Tees	"	—@ 35¢		1.05
	3—2″ Plugs	"	—@ 5¢		.15
	1—2″ Union	"			1.30
	Labor repairing rig				5.00
[fol. 536]					
Well #2					
	1—2″ Stop con. 1—@				3.60
	6—2″ nipples	"	—@ .20		1.20
	1—1¾″ working barrel	"			10.75
	1—6⅝″ casing head	"			7.50
	1—1¾″ Titus stfg. box	"			4.90
	1—Polish rod	"			5.25
	1—1¾″ upper valve	"			4.60
	1—1¾″ lower valve	"			3.75
	1—Valve rod	"			1.50

1918				
Sept.	1—Polish Rod Clamp	"		.90
	1# rubber rings	"		1.10
	8—1¼" Superior valve cups	"	—@ 25¢	2.00
	Original subs missing—See voucher analysis for charge ref. (Fuel)			218.30
	Original subs missing—See voucher analysis for charge ref.			64.00
	Hauling, casing, tubing, lumber & oil—7½ days @ 8.00			60.00
	Original subs missing—See voucher analysis for charge ref.			240.85
	Drilling—2380 ft. @ 3.50 per ft.			8,330.00
	5 days tubing Well #2 @ 36.00 per day			180.00
	2 days pumping Well #2 @ 15.00 per day			30.00
	Repairing and bracing rig			100.00
	194' 11"—12½" casing	con. 1	—@ 4.81	937.57
	430' 8"—8¼" casing	"	—@ 1.95	839.81
	65'—12½" casing	"	—@ 4.81	*312.65
	21' 11"—10" casing	"	—@ 3.30	*72.34
	459' 7"—8¼" casing	"	—@ 1.95	*896.18
	253' 4"—6⅝" casing	"	—@ 1.32	*334.40
	61'—2" tubing	"	—@ 32¢	*19.52
	75'—⅝" sucker rods	"	—@ 12¢	*9.00
	Voucher missing—See Incomplete Wells Invest. sheet for ref.			24.00
	Original subs destroyed—See voucher analysis for charge ref.			12.50
	1—8¼" nipple			5.64
	2—10" x 8¼" swedge nipples			20.86
	Express on 8¼" nipple			.70
1922				
Oct.	1—14 x 14 x 14 Pony sill 1—16 x 16 x 16 mud sill 1—28 x 28 x 10 Engine block 1—14 x 14 x 12 Tail sill 1—14 x 14 x 5 Tail post 1—6 x 16 x 5 Knuckle post 1—6 x 16 x 7 Knuckle post 1—6 x 16 x 4 2—8 x 8 x 4		1597' con. 2 @ 40.00	*63.88
	Total Cost—Well #2			24,457.40
Well #3				
1918				
June	10—¾" x 18" Bolts	con. 1	—@ 36¢—Rig repairs	3.60
	14—¾" x 20" Bolts	"	—@ 40¢ "	5.60
	30#—¾" cast washers	"	—@ 11¢ "	3.30
	5#—¾" wrought washers	"	—@ 11¢ "	.55
	6—1¼" nipples	con. 2	—@ 14¢	.84
	34'—1¼" pipe	"	—@ 15¢	5.10
	2—1" ells	"	—@ 15¢	.30
	2—1" tees	"	—@ 15¢	.30
	2—1" plugs	"	—@ 3¢	.06
	3—1¼" unions	"	—@ 40¢	1.20
	1—C. I. Cock	"		1.20
	3—1" nipples	"	—@ 10¢	.30
	20'—1" black pipe	"	—@ 12¢	2.40
	1—1½" tee & plug	"		.28
	14'—1½" black pipe	"	—@ 18¢	2.52
	1—50 bbl. galv. tank	"		60.00

* Denotes red in copy.

[fol. 537]

Schedule of Capital Expenditures—Continued

Well #3					
1918					
July	32'—1" manilla rope	con. 1			13.76
	4—¾" x 22" bolts	"	—@ 43¢		1.72
	2#—¾" washers				.24
Sept.	Original subs destroyed—See voucher anlaysis for charge ref.				38.49
Oct.	11,636 ft. pine lumber	con. 1	—@ 60.00 M	Rig	698.16
	350# nails	"	—@ 8¢	"	28.00
	768 ft. corrugated iron	"		"	52.99
	Voucher missing—See Incomplete Well invest. sheet for ref.				16.00
	Original subs destroyed—See voucher analysis for charge ref.				102.50
	Original subs destroyed—See voucher analysis for charge ref.				35.00
	16—2½" grooved B.W. cants	con. 1	—@ 56¢	Rig	8.96
	24—1" plain cants	"	—@ 30¢	"	7.20
	10# nails	"	—@ 8¢	"	.80
	Bolts & washers			"	1.74
	47# babbit	"	—@ 45¢	"	21.15
	75# nails	"	—@ 8¢	"	6.00
	87 ft. manilla rope	"			10.69
	16 Oak arms for bull wheel	"	—@ 1.50		24.00
	96—1" Plain bull wheel cants	"	—@ 30¢		28.80
	8—2½" Plain bull wheel cants	"	—@ 54¢		4.32
	16—2½" grooved wheel cants	"	—@ 56¢		8.96
	32 pins for bullwheel	"	—@ 8¢		2.56
	70# nails	"	—@ 8¢		5.60
	Original subs destroyed—See voucher analysis for charge ref.				164.73
	Original subs missing—See voucher analysis for charge ref. (Fuel)				440.30
	Building and repairing rig W#3				300.00
	1—8¼" casing shoe				48.00
	1—8¼" casing clamp				31.34
	Original subs destroyed—See voucher analysis for charge ref.				156.65
	Original subs missing—See voucher analysis for charge ref. (Fuel)				216.45
	60 qt. torpedo, 2400 ft. electric wire & road time				465.50
	1—6⅝" casing collar				1.75
	349'2"—12½"—45# casing	con. 1	—@ 4.81		1,679.51
	1415'4"—10"—32# casing	"	—@ 3.30		4,670.59
	1364'2"—8¼"—24# casing	"	—@ 1.96		2,673.77
	2372'2"—6⅝"—17# casing	"	—@ 1.13		2,680.55
	2475'7"—2" tubing	"	—@ 34¢		841.70
	2400'—⅝" sucker rods	"	—@ 13¢		312.00
	27'10"—6⅝"—17# casing	"	—@ 1.13		31.45
	18'11"—2" tubing	"	—@ 34¢		6.43
	25'—⅝" sucker rods	"	—@ 13¢		3.25
	35'—12½" casing—45#	con. 2	—@ 3.60		234.00
	21'11"—10"—32# casing	"	—@ 2.22		48.66
	459'7"—8¼"—24# casing	"	—@ 1.38		634.22
	253'4"—6⅝"—17# casing	"	—@ 85¢		215.33
	344'2"—8¼"—24# casing	"	—@ 1.38		474.95
	1 standard rig	"			800.00
	107'8"—12½"—45# casing	con. 1	—@ 4.81		*517.89
	172'4"—10"—32# casing	"	—@ 3.30		*568.69
	107'11"—8¼"—24# casing	"	—@ 1.96		*211.52
	314'—6⅝"—17# casing	"	—@ 1.13		*354.82
	63'6"—2" tubing	"	—@ 34¢		*21.59
	125'—⅝" sucker rods	"	—@ 13¢		*16.25
	Drilling—2416 ft. @ 3.50 per ft.				8,456.00
	Day work				494.00
	Original subs destroyed—See voucher analysis for charge ref.				24.00

* Denotes red in copy.

	Original subs missing—See voucher analysis for charge ref. (Fuel)			37.00
	Original subs destroyed—See voucher analysis for charge ref.			57.69
	1—6⅝" casing head	con. 1		8.25
	1—1¾" working barrel	"		10.25
[fol. 538]				
Well #3				
1918				
Oct.	1—Titus stf'g box	con. 1		4.75
Cont.	1—1¾" upper valve	"		4.67
	1—1¾" lower valve	"		4.61
	4 Cups for Myers pump	"	—@ 1.50	6.00
	1 Polish rod	"		4.75
	1 Polish rod sub	"		.50
	1 Polish rod clamp	"		1.00
	1 Valve rod	"		1.75
	8 Ft. Pony sucker rod	"	—@ 20¢	1.60
	3# Waste	"	—@ 25¢	.75
Dec.	Original subs destroyed—See voucher analysis for charge ref.			41.32
1919				
June	3—6⅝" nipples			11.10
1920				
Sept.	408 Ft. lumber @ 86.00			*35.08
	3 days running casing @ 5.00			15.00
	9 Meals @ 1.00			9.00
	1 day hauling 2" tubing from Elk Basin Whse. @ 20.00			20.00
	1 day hauling 2" tubing from Elk Basin Whse. @ 11.00			11.00
1923				
May	358' 6"—2" tubing	con. 1—@ .27		*96.80
	Total Cost—Well #3			25,738.67

* Denotes red in copy.
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[fol. 539]

The Ohio Oil Company
Producing and Merchandising Department
Schedule of Capital Expenditures
State Land Sec. 36–58–100, Elk Basin Field, Wyoming

Well #4			
1918			
Dec.	Rigs—Labor:		
	2 da. Helping Move Rig	@ 4.50	9.00
	2 da. Board	@ 7.25	14.50
	Rig—Teaming & Trucking		
	6 da. Hauling rig	@ 8.00	48.00
1919			
Jan.	Rig Material:		
	2½ Grooved Cants	@ .56	4.48
	24—1" Plain Cants	@ .26	6.24
	20#—20d Nails	@ .08	1.60
	15#—8d Nails	@ .08	1.20
	1 Standard Rig		1,200.00
	Rig—Teaming & Trucking:		
	4 da. Hauling rig lumbers	@13.50	54.00
	1 da. Hauling 6⅝" casing	@ 8.00	8.00
	1 da. Hauling 6⅝" casing	@13.50	13.50
	Miscellaneous Material:		
	1 Hatchet Handle	@ .20	.20
	1 B. P. Hammer Handle	@ .20	.20

* Denotes red in copy.

Schedule of Capital Expenditures—Continued

1919				
Feb.	Rig Material:			
	16 Oak Arms	@	1.20	19.20
	32 Pins	@	.08	2.56
	96—1" Plain B. W. Cants	@	.26	24.96
	20—2½" Grooved Cants	@	.60	12.00
	18—2½" Plain Cants	@	.55	9.90
	1—Bull Wheel Shaft			77.50
	8834' Pine Lumber	@	60.00	530.04
	100#—8d Nails	@	.08	8.00
	150#—16d Nails	@	.08	12.00
	100#—20d Nails	@	.08	8.00
	100#—30d Nails	@	.08	8.00
	4—2½" Grooved B. W. Cants	@	.60	2.40
	Rigs—Labor:			
	Building rig			280.00
	Building Bull Wheel			25.00
	Framing Knuckle Post and Swing Lever			5.00
	Taking down crown block and removing calf wheel from Rig at Well #3			15.00
	Rig—Teaming & Trucking:			
	1 da. Hauling lumber & timbers	@	8.00	8.00
	1 da. Hauling lumber & timbers	@	8.00	8.00
	½ da. Hauling rig material	@	8.00	4.00
	Pipe			
	2499' of 6⅝" Casing	Cond. 1 @	1.315	3,286.19
	Miscellaneous Labor:			
	Digging cellar, casing same, digging ditch for sump and building sump box			50.00
Apr.	Rig Material:			
	20—1" Plain Band Wheel Cants	@	.26	5.20
	16#—20d Nails	@	.08	1.28
	32#—10d Nails	@	.08	2.56
	15#—30d Nails	@	.08	1.20
	Rig—Teaming & Trucking:			
	½ da. Hauling Lumber	@	8.00	4.00
	Pipe:			
	197' 3" of 12½" Pipe	Cond. 1 @	3.26	643.04
	Pipe—Teaming & Trucking:			
	1 da. Hauling 2" tubing	@	8.00	8.00
	1 da. Hauling 2" tubing	@	8.00	8.00
	1 da. Hauling 10" casing	@	13.50	13.50
	3 da. Hauling 12½" casing	@	13.50	40.50
	3 da. Hauling 12½" casing	@	13.50	40.50
	1 da. Hauling 12½" casing	@	13.50	13.50
	1 da. Hauling 12½" casing	@	13.50	13.50
[fol. 540]	1 da. Hauling 12½" casing	@	13.50	13.50
Well #4				
	Other Equipment—Material:			
	1 Casing Clamp			69.64
	Miscellaneous Teaming & Trucking:			
	1 da. hauling water tank	@	13.50	13.50
	1 da. hauling water tank	@	13.50	13.50
	½ da. hauling water tank	@	8.00	4.00
	1 da. hauling oil for fuel	@	8.00	8.00
	½ da. hauling oil for fuel	@	8.00	4.00
	1 da. hauling oil for fuel	@	8.00	8.00
	Miscellaneous Material:			
	364' Lumber for Wood Conductor	@	60.00	21.84
	30#—16d Nails	@	.08	2.40

1919			
May	Rig—Teaming & Trucking:		
	Repairs to rig hauled		.13
	Pulling & Running Casing:		
	8 da. Pulling Casing	@ 3.00	24.00
	8 da. Board	@ 3.00	24.00
	8 da. Pulling Casing	@ 3.00	24.00
	8 da. Board	@ 3.00	24.00
	5 da. Pulling Casing	@ 3.00	15.00
	5 Da. Board	@ 3.00	15.00
	8 Da. Pulling Casing	@ 3.258	26.07
	8 Da. Board	@ 3.258	26.07
	Water:		
	2 Da. Water	@ 5.00	10.00
	Fuel:		
	60 Bbl. Crude Oil	.....	111.00
	30 Bbl. Crude Oil	@ 1.85	55.50
	128 Bbl. Crude Oil	@ 1.85	236.80
	117 Bbl. Crude Oil	@ 1.85	216.45
	117 Bbl. Crude Oil	@ 1.85	216.45
	Pipe:		
	116'9"—10" Casing	@ 1.40	163.45
	680'3"—10" Casing	@ 2.07	1,408.12
	Pipe—Teaming & Trucking:		
	1 Da. Hauling 10" Pipe	@30.00	30.00
	1 Da. Hauling 10" Pipe	@30.00	30.00
	½ Da. Hauling 10" Pipe	@30.00	15.00
	1 Da. Hauling 10" Pipe	@30.00	30.00
	1 Da. Hauling 10" Pipe	@30.00	30.00
	1 Da. Hauling 10" Pipe	@30.00	30.00
	1 Da. Hauling 10" Pipe	@30.00	30.00
	Other Equipment—Material:		
	1—18¼ x 12 Sub. Nipple	@ 5.85	5.85
	1—10 x 18" Sub. Nipple for 40# Casing	@10.92	10.92
	1—10 x 16" Casing Shoe	@56.59	56.59
	1—Delivery		2.67
	Miscellaneous Labor:		
	3 da. Helping haul casing	@ 3.00	9.00
	3 da. Board	@ 3.00	9.00
	9 da. Pumping Water	@ 3.258	29.32
	9 da. Board	@ 3.258	29.32
	Miscellaneous Teaming & Trucking:		
	½ da. Hauling 10" Casing Spear	@30.00	15.00
June	Pulling & Running Casing:		
	1 da. Pulling Casing	@ 3.50	3.50
	1 da. Board—3 meals @ 70¢		2.10
	1 da. Pulling Casing	@ 4.15	4.15
	1 da. Board—3 meals @ 70¢		2.10
	3 da. Pulling Casing	@ 3.00	9.00
	3 da. Board—9 meals @ 70¢		6.30
	3 da. Pulling Casing	@ 5.00	15.00
	3 da. Board—9 meals @ 70¢		6.30
[fol. 541]			
Well #4			
	Water:		
	4 Da. Water	@ 5.00	20.00
	Fuel:		
	50 Bbls. Crude Oil	@ 1.85	92.50
	30 Bbls. Crude Oil	@ 1.85	55.50
	13 Bbls. Crude Oil	@ 1.85	24.05
	60 Bbls. Crude Oil	@ 1.85	111.00
	68 Bbls. Crude Oil	@ 1.85	125.80
	Other Equipment—Material:		
	Correction on charge of May 14		3.00

Schedule of Capital Expenditures—Continued

1919				
June	Miscellaneous Labor:			
	Reimbursement for two meals on labor in May			1.25
	Miscellaneous Teaming & Trucking:			
	Hauling setting tool			.55
	Hauling casing shoe			3.22
	1 da. Hauling fuel oil		@13.50	13.50
	1 da. hauling drum tongs		@16.00	16.00
July	Pipe:			
	1438' of 10" casing	Cond. 1	@ 2.558	3,678.40
	323'2" of 12½" Casing	Cond. 1	@ 3.561	1,150.81
	51'2" of 12½" Casing	Cond. 2	@ 2.67	136.62
	181'2" of 12½" Casing	Cond. 1	@ 3.561	645.15
	Other Equipment—Material:			
	2—10" Casing Shoe	Cond. 1	@150.00(2)	150.00
	1—8¼" 10 thd. x 16 Baker Csg. Shoe			79.33
	15# Genuine Babbitt			12.00
	Well Equipment Credits—Pipe:			
	181'2" of 12½" Pipe	Cond. 2	@ 2.67	*483.72
	Investment:			
	Express on Casing Spear			11.32
August	Pulling & Running Casing:			
	2 da. Running Casing		@ 4.75	9.50
	2 da. Running Casing		@ 4.50	9.00
	Other Equipment—Material:			
	1 set 1 x 6—8¼" Csg. Clamps, 12" ears			44.34
	1 set 8¼" 10 thd. x 16 Baker Csg. Shoe			79.33
Sept.	Rig Material:			
	16—1 x 6 Plain Cants for Band Wheel		@ .28	4.48
	8—2½" Grooved Cants for Band Wheel		@ .60	4.80
	10#—16d Nails		@ .06	.60
	10#—30d Nails		@ .06	.60
	10#—8d Nails		@ .06	.60
	4—¾ x 16 Machine Bolts		@ .32	1.28
	8#—C. I. Washers		@ .105	.84
	1#—⅞" W. I. Washers		@ .129	.13
	1—Sand Sheave for Std. Rig Irons			36.50
	4—¾ x 16 Machine Bolts		@ .32	1.28
	1½#—1" W. I. Washers		@ .129	.19
	Rigs—Labor:			
	Repairing tug on bandwheel			5.00
	Braces on Samson post and guide on beam			2.50
	Repairing tub wheel			20.00
	Repairing bandwheel			10.00
	Rig—Teaming & Trucking:			
	1 da. Hauling Sand Sheave & Lumber		@15.00	15.00
	Other Equipment—Material:			
	1—6⅛" x 8" Baker Drive Shoe with guide			55.30
	1—8¼" x 16" Baker Drive Shoe for 28# Csg.			72.80
[fol. 542]				
Well #4				
Oct.	Rig. Material:			
	1—¾" x 30" Machine Bolt		@ .60	.60
	15#—16d Nails		@ .071	1.07
	19 pcs. 8' Corrugated Iron		@ 1.41	26.79
	108' Lumber		@65.00	7.02
	36' Lumber		@65.00	2.34
	10#—30d Nails		@ .071	.71
	3#—1" Nuts		@ .12	.36
	1—Wrist Pin for 5" Std. Rig Irons			18.23

* Denotes red in copy.

1919			
Oct.			
	Pipe—Teaming & Trucking:		
	1 da. Hauling pipe	@13.50	13.50
	1 da. Hauling pipe	@35.00	35.00
	Well Equipment Credits—Pipe:		
	20' 4" of 8¼" Pipe	@ 1.59	*32.32
Nov.	Rig Material:		
	30#—8d Nails)		
	20#—16d Nails)	4.26	
	10#—30d Nails)		
	744' Lumber	48.36	
	560' Lumber	36.40	
	15#—8d Com. Nails)		
	10#—16d Com. Nails)	1.78	
	1 Wrist Pin for 5" Std. Rig. Irons	18.25	109.03
	43—5" Shaft & Crank Std. Rig Irons		230.29
	Rigs—Labor:		
	Tearing down rig		35.00
	Pipe:		
	7' 6"—8¼" Pipe Cond. 1	@21.31	15.98
	Miscellaneous Teaming & Trucking		
	1 da. Cleaning up around power house	@ 8.00	8.00
	Investment:		
	Hauling Bandwheel shaft—1 da.	@15.00	15.00
	Original sub destroyed—See voucher analysis for charge reference		28.50
Dec.	Rig—Teaming & Trucking:		
	1 da. Hauling Band wheel shaft	@15.00	15.00
	Drilling:		
	Adjustment to Drilling Costs		*49.00
	Fuel:		
	1,081 Bbls. Crude Oil	@ 1.85	1,999.85
	35 Bbls. Crude Oil	@ 2.10	73.50
	20 Bbls. Crude Oil	@ 2.10	42.00
	Pipe:		
	104' 5" 6⅝" Pipe	@ 1.46	*152.45
	Pipe—Teaming & Trucking		
	1 da. Hauling pipe	@ 8.00	8.00
	Miscellaneous Teaming & Trucking		
	1 da. Hauling Oil	@ 8.00	8.00
	1 da. Hauling Oil	@ 8.00	8.00
1920			
Jan.	Rig Material:		
	24—1 x 6 Bandwheel Tug Cants	@ .32	7.68
	32—2½ x 6 B. W. Grooved Cants	@ .65	20.80
	8—2½ x 6 B. W. Plain Cants	@ .60	4.80
	40—1 x 6 B. W. Cants	@ .32	12.80
	25#—20d Com. Nails	@ .071	1.78
	15#—16d Com. Nails	@ .071	1.06
	6—B. W. Pins	@ .06	.36
	1—Wrist Pin for 5" Ideal Rig Irons		18.15
	500' Lumber	@79.00	39.50
	100#—16d Com. Nails	@ .071	7.10
[fol. 543]			
Well #4			
	Rig Material:		
	4—¾ x 18 Machine Bolts	@ .36	1.44
	4—¾ x 16 Machine Bolts	@ .32	1.28
	5#—¾ C. I. Washers	@ .10	.50

* Denotes red in copy.

Schedule of Capital Expenditures—Continued

1920				
Jan.				
	1 Set—Side Irons			78.98
	200' Lumber		@79.00	15.80
	Rig—Teaming & Trucking			
	Hauling rig cranks and shafts			4.89
	Fuel:			
	14 Bbls. Crude Oil		@ 2.10	29.40
	31 Bbls. Crude Oil		@ 2.10	65.10
	28 Bbls. Crude Oil		@ 2.35	65.80
	47 Bbls. Crude Oil		@ 2.35	110.45
	33 Bbls. Crude Oil		@ 2.60	85.80
	15 Bbls. Crude Oil		@ 2.60	39.00
	17 Bbls. Crude Oil		@ 2.60	44.20
	15 Bbls. Crude Oil		@ 2.60	39.00
	29 Bbls. Crude Oil		@ 2.60	75.40
	39 Bbls. Crude Oil		@ 2.60	101.40
	Pipe:			
	2378' 1" of 8¼" Pipe		@ 2.131	5,067.69
	Other Equipment—Material:			
	1—6⅝ x 4' x 17# Casing Nipple			7.84
	1—6⅝ x 2½ x 17# Casing Nipple			5.65
	2—6⅝" Casing Collars		@ 3.30	6.60
	Miscellaneous Teaming & Trucking:			
	1 da. Hauling oil and water		@ 8.00	8.00
	1 da. Hauling Oil		@ 8.00	8.00
Feb.	Rig Material:			
	1—Wrist pin for 5" Std. Rig			18.23
	87#—1 x 1½ Flat Iron		@ .14	12.18
	71#—½ x 3 Flat Iron		@ .14	9.94
	12—¾ x 11 Machine Bolts		@ .22	2.64
	12—¾ x 12 Machine Bolts		@ .24	2.88
	11—¾ x 24 Machine Bolts		@ .48	5.28
	Rigs—Labor:			
	Building two new tug wheels			20.00
	Taking off & putting on new saddle, etc.			10.00
	Bracing Samson post and putting in new headache post			5.00
	Repairing derrick, nailing up, bracing, etc.			105.00
	Drilling:			
	Drilling Well #4—2565' @ $3.50 ft.			8,977.50
	Fuel:			
	46 Bbl. Crude Oil		@ 2.60	119.60
	25 Bbl. Crude Oil		@ 2.60	65.00
	Miscellaneous Teaming & Trucking:			
	1 da. Hauling cement & plugging material		@ 8.00	8.00
	Miscellaneous Material:			
	500# cement		@ 2.15	10.65
Mar.	Fuel:			
	33 Bbls. Crude Oil		@ 2.60	85.80
Apr.	Fuel:			
	5.58 Bbls. Crude Oil		@ 3.10	17.30
	3.72 Bbls. Crude Oil		@ 3.10	11.53
	5.58 Bbls. Crude Oil		@ 3.10	17.30
	12.09 Bbls. Crude Oil		@ 3.10	37.48
	24.18 Bbls. Crude Oil		@ 3.10	74.95
	29 Bbls. Crude Oil		@ 3.10	89.90
	Pipe:			
	19' 7" of 12½" Pipe		@ 2.853	55.86

[fol. 544]

Well #4

1920			
May	Well Equipment Credits—Pipe:		
	2395'1" of 6⅝" Pipe	@ .99	*2,371.13
	2365'3" of 8¼" Pipe	@ 1.455	*3,441.44
	680'3" of 10" Pipe	@ 2.178	*1,481.59
	1438'0" of 10" Pipe	@ 1.92	*2,760.96
	107'7" of 12½" Pipe	@ .20	*21.92
	420'0" of 12½" Pipe	@ 2.58	*1,083.60
	Investment:		
	Labor		20.90
July	Drilling:		
	22 da. Drilling up joint of casing	@50.00	1,100.00
	10 da. Toots shut down to pump water	@50.00	500.00
	Pulling & Running Casing:		
	36 da. Pulling 10" casing	@50.00	1,800.00
	66 da. Pulling all casing	@50.00	3,300.00
Aug.	Miscellaneous Teaming & Trucking:		
	Hauling Tongs & casings		2.34
Sept.	Pipe:		
	14'5" of 8¼" Pipe	@ .10	*1.44
	43'3" of 10" Pipe	@ .15	*6.47
	70'7" of 12½" Pipe	@ .20	*14.12
	Other Equipment—Material:		
	2—8¼" Casing Collars	@ .15	*.30
	1—10" Casing Shoe	@ .20	*.20
	1—8¼" Nipple	@ .10	*.10
Nov.	Other Equipment—Material:		
	1—12½" Steel Die Nipple		160.29
1922			
Oct.	Pipe:		
	8'0" of 6⅝" Casing	@ 1.04	*8.32
	Total Well #4		29,835.54

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Well #5

1920		
July	1 day hauling lumber	13.50
	1 day working roads	8.00
	Original sub destroyed—See voucher analysis for charge ref.	13.50
	1 day hauling casing	13.50
	Total Cost—Well #5	48.50

Water Well #1

1918			
July	149' 10"—6⅝"—17# Casing Con.	#1—@ 1.13	169.31
	185' 11"—2" Tubing	" —@ 34¢	63.21
	175'—⅝" sucker rods	" —@ 12¢	21.00
	1—6⅝" casing nipple	"	8.50
	1—6⅝" Casing head	"	7.00
	1—1¾" working barrel	"	10.25
	1—Polish rod	"	4.10
	1—Polish rod clamp	"	1.00
	1—Polish rod sub	"	.50
	1—Valve rod	"	1.50
	1—Titus stfg. box	"	4.00

* Denotes red in copy.

Schedule of Capital Expenditures—Continued

1918				
July	1—1¾″ upper valve	"		3.67
	1—1¾″ lower valve	"		3.61
	1# Rubber rings	"		1.50
	12 ft. pony sucker rods	"		2.16
	1—2″ tee	"		.47
	1—2″ plug	"		.08
	1—2″ C. I. cock	"		2.60
	1—2″ flange union	"		1.10
	1—2″ ell	"		.47
	3—2″ nipples	"		.84
Sept.	27′ 10″—6⅝″—17# casing	"	—@ 1.13	*31.45
	18′ 11″—2″ tubing	"	—@ 34¢	*6.43
	25′—⅝″ sucker rods	"	—@ 13¢	*3.25
	Drilling—167 ft. @ 3.50 per ft.			584.50
	Total Cost—Water Well #1			850.24
Water Well #2				
1919				
Sept.	Hauling 6⅝″ casing—1 da.			13.50
Oct.	437′8″—2″ line pipe	con. #1	—@ 27¢	118.17
	400′—⅝″ sucker rods	"	—@ 11.5¢	46.00
	297′11″—6⅝″ casing	con. #2	—@ 1.11	330.69
	102′10″—6⅝″ casing	con. #1	—@ 1.46	150.13
	1—1¾″ lower valve	"		3.30
	1—⅞″ valve rod	"		1.28
	1—6⅝″ casing head	"		5.78
	1—2″ tubing ring	"		.25
	6—2″ nipples	"		1.32
	3—2″ tees	"	—@ 52¢	1.56
	3—2″ plugs	"	—@ 9¢	.27
	1—2″ flange union	"		1.38
	1—6⅝″ x 2″ casing nipple	"		5.12
	20′4″—8¼″ casing	con. #2	—@ 1.59	32.32
	39′6″—2″ line pipe	con. #1	—@ 27¢	*10.67
	Drilling—405 ft. @ 3.50 per ft.			1,417.50
	Day work			180.00
1920				
Mar.	Hauling rods, jack & 2″ line pipe			23.00
	426′3″—3″ line pipe	con. #1	—@ 44.6¢	190.11
	1—3″ Tee	"		.99
	2—2″ x 3″ bushings	"	—@ 30¢	.60
	1—3″ nipple	"		.60
	400′—⅝″ sucker rods	"	—@ 11.5¢	46.00
	1—6⅝″ casing head	"		7.85
	Original sub destroyed—see voucher analysis for charge ref.			6.50
[fol. 546]				
Water Well #2				
1920				
Apr.	Hauling rods & jack—1 da.			8.00
				2,581.55
Water Well #3				
1922				
June	Rigging up and Spudding in—3 da. @ 35.00			105.00
	Rigging up and Spudding in—5 da. @ 70.00			350.00
	3 da. Water @ 5.00			15.00
	5 da. Water @ 10.00			50.00

* Denotes red in copy.

1922			
July	Running casing—½ day @ 4.00		2.00
	Running casing—1 day @ $4.00		4.00
	326′ 6″—10″ Casing, Wt. 32#	con. #2—@ 1.43	466.90
	21′ 3″ —10″ Casing	" —@ 1.43	30.39
	171′ —10″ Casing	" —@ 1.43	244.53
	82′ 10″—10″ Casing	" —@ 1.43	118.45
	99′ 7″ —10″ Casing	" —@ 1.27	*126.47
	Hauling 10″ Casing—2 da. @ 9.00		18.00
	425′ ⅝″ Sucker Rods	con. #1—@ 7.92	33.66
	75′ ⅝″ Sucker Rods	" —@ 7.92	5.94
	1—8¼″ 2 way casing head	" —@11.55	11.55
	1—2¾″ working valve	" —@ 6.63	6.63
	Hauling ⅝″ sucker rods—1 da.		9.00
Aug.	Drilling 502 ft. @ 2.50		1,255.00
	1—3″ tubing ring for 8¼″ reg. casing head, con. #1		.76
	Express on Top for 8¼ casing head		.72
Sept.	97′ 10″—10″ Casing	con. #1—@ 1.47	*143.81
	1—10″ x 10 32½# cag. shoe	"	22.94
	1—3″ x 6′ steel working barrel		11.26
	Express		2.39
	Less 2%		*.68
	1—⅝ x 5′ sucker rod sub	con. #2	*.72
	1—⅝ x 8′ sucker rod sub	"	*.87
Oct.	74′ 7″ 3″ Line Pipe	con. #1 @ 36¢	*26.85
	576′ 4″ 3″ Line Pipe	" @ 40¢	230.53
Nov.	5 da. Gas furnished @ 10.00		50.00
	3 da. Gas furnished @ 5.00		15.00
	1—⅞″ x 6′ valve rod	Con. #1	2.12
Dec.	1—2¼″ x 1⅛″ Titus stuffing box		3.41
	Total Cost—Water Well #3		2,765.78

[fol. 547]

Lease Equipment

1917			
Sept.	1—250 Bbl. Maloney tank con. 1		420.00
	1 Complete Standard rig		800.00
	38′ 1″—12½″—45# casing	" —@ 3.40 Surplus W#1	129.47
	106′ 9″—10″—32# casing	" —@ 2.04 "	217.77
	62′ 8″—8¼″—24# casing	" —@ 1.70 "	106.54
	61′ 5″—6⅝″—17# casing	" —@ 90.3¢ "	55.46
	27′—2″ tubing	" —@ 27¢ "	7.29
	25′—⅝″ sucker rods	" —@ 9¢ "	2.25
Nov.	1—35 HP gas engine complete with ring oilers, reg. clutch, open crank shield & Wico igniter		1,446.97
	1—#30 front box for side shaft on superior gas engine		6.36
	Hauling material from Frannie to Elk Basin, Wyo.		39.88
	14# nails	con. 1 connecting eng. W#1	1.12
	2 Pr. 8″ "T" hinges	" —@ .25 "	.50
	2—¾″ x 7″ bolts	" —@ .15 "	.30
	1—B. P. hammer	" "	.95
	20′ 10″—½″ black pipe	" —@ 7¢ "	1.46
	21′ 7″—1″ pipe	" —@ 11¢ "	2.37
	49′—1½″ pipe	" —@ 14¢ "	6.86
	1—½″ globe valve	" "	1.20
	1—½″ ell	" "	.05
	1—½″ st. ell	" "	.05
	2—½″ x 4″ nipples	" —@ 4¢ "	.08
	1 Redeye gasket	" "	.50
	1—2″ x 1″ bushing	" "	.15
	1—½″ x 1″ bushing	" "	.10
	1—1¼″ x 1½″ bushing	" "	.15

*Denotes red in copy.

Schedule of Capital Expenditures—Continued

1917					
Nov.	1—1″ globe valve	"		"	2.10
	1—1″ x 4″ nipple	"		"	.10
	1—1¼″ tee	"		"	.20
	1—1¼″ lip union	"		"	.45
	4—1¼″ x 4″ nipples	"	—@ 14¢	"	.56
	3—1½″ x 2″ bushing	"	—@ 15¢	"	.45
	1—1½″ tee	"		"	.28
	1—1½″ plug	"		"	.04
	1—1½″ lip union	"	—@ 60¢	"	1.80
	2—1½″ iron stops	"	—@ 1.60	"	3.20
	4—1½″ ells	"	—@ 25¢	"	1.00
	2—1½″ st. ells	"	—@ 25¢	"	.50
	7—1½″ nipples	"	—@ 18¢	"	1.26
	2—2″ tees	"	—@ 35¢	"	.70
	2—2″ plugs	"	—@ 5¢	"	.70
	6—2″ ells	"	—@ 30¢	"	1.80
	1—2″ flange union	"		"	.80
	7—2″ nipples	"	—@ 20¢	"	1.40
	1—1⅛″ polish rod	"	Pumping Equip. W#1		5.00
	1—1″ std. ell	"		"	.13
	1 set 12″ belt clamps	"		"	1.50
	90′—12″ belting	"	—@ 1.72	"	154.80
	1—1½″ tee	"		"	.28
	2—1½″ plugs	"		"	.08
	5 Gal. gas engine oil		—@ 65¢	"	3.25
	1 Funnel	"			.20
	1—3″ x 4″ nipple	"		"	.40
	1—8″ hasp & staple	"		"	.15
	1—½″ x 3″ bolt	"		"	.03
	1—¾″ x 12″ bolt	"		"	.21
	1—⅜″ lip union	"	Connecting eng. W#1		.20
	1—½″ plug	"		"	.01
	1—½″ com. ell	"		"	.05
	1—½″ st. ell	"		"	.05
	8# nails	"	—@ 8¢	"	.64
	138′ 11″—2″ line pipe	con. 2	—@ 16¢ lead line to tank		22.23
	1—60 bbl. galv. tank	"	overflow tank to engine W#1		75.00

[fol. 548]

Lease Equipment

	42′ 8″—8¼″—24# casing	con. 1	—@ 1.70		*72.54
	1—1½″ x 2″ bushing	"			*.15
	1—1½″ Tee	"			*.28
	1—1¼″ st. ell	"			*.18
	1—1¼″ nipple	"			*.14
	10′—10″—24# casing	"	—@ 1.53		*15.30
	61′5″—6⅝″—17# casing	"	—@ 69¢		*42.44
	19′8″—8¼″—24# casing	"	—@ 15¢		*2.93
Dec.	2—½″ x 4″ bolts	con. 1	—@ 4¢, setting pumping eng. W#1		.08
	4—⅞″ x 10″ B. E. Bolts	"	—@ 25¢	"	1.00
	3—¾″ x 36″ bolts	"	—@ 50¢	"	1.50
	10# Nails	"	—@ 8¢	"	.80
	1—¾″ x 16″ bolt	"		"	.35
	Hauling Tank—½ da. @ $7.00				3.50
1918					
Mar.	1—150 Bbl. Maloney Tank	con. 1			275.00
Apr.	90′10″—10″—32# casing	"	—@ 2.04		*185.29
	38′1″—12½″—36# casing	con. 2	—@ 2.55		*97.10
May	1—2″ st. ell	con. 1	con. oil line		.35
	1—2″ tee	"		"	.35

* Denotes red in copy.

1917						
May	1—2″ Plug	"			"	.05
	1—2″ C. I. stop	"			"	3.60
	2—2″ nipple	"	—@	20¢	"	.40
June	1—25 H.P. Superior Gas Eng.	con. 2			Pumping equip. W♯2	627.00
	4—1¼″ tees	"	—@	30¢	"	.80
	4—1¼″ plugs	"	—@	4¢	"	.16
	3—1¼″ ells	"	—@	20¢	"	.60
	1—1¼″ st. ell	"			"	.20
	1—2″ x 1½″ Bushing	"			"	.12
	1—1½″ Plug	con. 1			"	.04
	1—½″ Plug	"			"	.01
	1—B. P. Hammer	"			"	.98
	1—cold chisel	"			"	.50
	1—14″ M.B. file	"			"	.55
	6—5/16″ x 4″ bolts	"	—@	4¢	"	.24
	1—2″ tee	"			"	.35
	1—2″ plug	"			"	.05
	90′—12″ rubber belting	"	—@	1.80	"	162.00
	2—12″ belt clamps	"	—@	75¢	"	1.50
	12 bolts	"	—@	5¢	"	.60
	1 spark plug	"			"	1.50
	3—¾″ x 6″ bolts	"			"	.42
	326 ft. pine lumber	"			"	19.56
	10♯ Nails	"			"	.80
	1—1¼″ plug	"			"	.04
	1—5 gal. W. J. oil can	"			"	.95
	5 gal. gas engine oil	"	—@	60¢	"	3.00
	65′—12½″ casing	"	—@	4.81	Surplus W♯2	312.65
	21′11″—10″ casing	"	—@	3.30	"	72.34
	459′7″—8¼″ casing	"	—@	1.95	"	896.18
	253′4″—6⅝″ casing	"	—@	1.32	"	334.40
	61′—2″ Tubing	"	—@	32¢	"	19.52
	75″—⅝″ sucker rods	"	—@	12¢	"	9.00
July	39′1″—2″ line pipe	"	—@	24¢	Lead Line	9.37
Sept.	3—2″ Tees	con. 1	—@	47¢	Con. W♯3 to tank	1.41
	3—2″ Plugs	"	—@	8¢	"	.24
	2—2″ flange unions	"	—@	1.20	"	2.40
	3—2″ C. I. cocks	"	—@	2.60	"	7.80
	3—2″ ells	"	—@	47¢	"	1.41
	3—2″ st. ells	"	—@	47¢	"	1.41
	7—2″ nipples	"	—@	28¢	"	1.96

[fol. 549]

Lease Equipment

1918						
Sept.	1—2″Check valve	con. 1			Con. W♯3 to tank	6.40
	8—¾″ x 36″ bolts	"	—@	72¢	Setting Gas Eng. W♯3	5.76
	4♯—¾″ cast washers	"	—@	10¢	"	.40
	2♯—¾″ W. washers	"	—@	10¢	"	.20
	4—⅞″ x 10″ bolts	"	—@	30¢	"	1.20
	2♯—1″ washers	"	—@	10¢	"	.20
	3—2″ tees	"	—@	47¢	Lead Line Con.	1.41
	3—2″ plugs	"	—@	8¢	"	.24
	2—2″ st. ells	"	—@	47¢	"	.94
	3—2″ nipples	"	—@	28¢	"	.84
	7 ft. 1¼″ black pipe	"	—@	16¢	"	1.12
	107′8″—12½″—45♯ casing	"	—@	4.81	Surplus W♯3	517.89
	172′4″—10″—32♯ casing	"	—@	3.30	"	568.69
	107′11″—8¼″—24♯ casing	"	—@	1.96	"	211.52
	314′—6⅝″—17♯ casing	"	—@	1.13	"	354.82
	63′6″—2″ tubing	"	—@	34¢	"	21.59

Schedule of Capital Expenditures—Continued

1918					
Sept.	125'—⅝" sucker rods	"	—@ 13¢	"	16.25
	65'—12½"—45# casing	con. 2	—@ 3.60		*234.00
	21'11"—10"—32# casing	"	—@ 2.22		*48.66
	459'7"—8¼"—24# casing	"	—@ 1.38		*634.22
	253'4"—6⅝"—17# casing	"	—@ 85¢		*215.33
Oct.	6—1" Tees	con. 1	—@ 18¢	Conn. Gas Eng. W#3	1.08
	6—1" Plugs	"	—@ 4¢	"	.24
	6—1" Lip Unions	"	—@ 40¢	"	2.40
	2—1" C. I. cocks	"	—@ 1.50	"	3.00
	2—1" globe valves	"	—@ 2.10	"	4.20
	4—1" ells	"	—@ 18¢	"	.72
	8—1" st. ells	"	—@ 18¢	"	1.44
	14—1" nipples	"	—@ 10¢	"	1.40
	62'6"—1" pipe	"	—@ 15¢	"	8.13
	78'—12" belting	"	—@ 2.20	gas engine	171.60
	1 set 12" belt clamps	"		"	1.00
	1—# 155 shoe plate	"		"	2.50
	1 spark plug	"		"	1.50
	2 friction fibers for clutch	"	—@ 1.00	"	2.00
	6 belt clamp bolts	"	—@ 5¢	"	.30
	1 Latch block for Wico	"		"	.60
	1 Latch block screw for Wico	"		"	.15
	1—20 HP Superior gas engine	con. 2			570.00
	1—60 bbl. galv. tank	"			85.00
Nov.	1—1½" st. ell	con. 1		Con. lead line	.28
	1—1¼" st. ell	"		"	.20
	5—1" ells	"	—@ 15¢	"	.75
	6—1" nipples	"	—@ 10¢	"	.60
	1—1¼" x 1" bushing	"		"	.05
	1—1½" x 1" bushing	"		"	.05
Dec.	1—10# com. s. r. Hook w/swivel				3.50
1919					
Jan.	4—2" tees	con. 1	—@ 57¢	Steam line con.	1.88
	4—2" plugs	"	—@ 8¢	"	.32
	2—2" flange unions	"	—@ 1.30	"	2.60
	2—2" C. I. stops	"	—@ 2.83	"	5.66
	6—2" nipples	"	—@ 20¢	"	1.20
	3—1" lip unions	con. 1	—@ 40¢	"	1.20
	2—1" globe valves	"	—@ 2.30	"	4.60
	4—1" tees	"	—@ 15¢	"	.60
	4—1" plugs	"	—@ 3¢	"	.12
	2—1" x 2" bushings	"	—@ 14¢	"	.28
	4—1" nipples	"	—@ 10¢	"	.40
	Original sub destroyed—see voucher analysis for charge reference				13.50
	Original sub destroyed—see voucher analysis for charge reference				8.00
Feb.	Original subs missing—see voucher analysis for charge reference				12.85
	Original subs destroyed—no analysis sheet—see Well Farms Investment sheet for charge reference				12.00

[fol. 550]

Lease Equipment

Mar.	1—18" Trimo wrench				3.65
	Original subs destroyed—see voucher analysis for charge ref.				4.00
Apr.	3—2" C. I. cocks	con. 1	—@ 2.60	Gas line	7.80
	3—2" Flange unions	"	—@ 1.25	"	3.75
	13—2" nipples	"	—@ 20¢	"	2.60
	1# gaskets	"		"	.60
	Original subs destroyed—see voucher analysis for charge ref.				20.00
	Original subs destroyed—see voucher analysis for charge ref.				6.00

* Denotes red in copy.

1919					
May	5000 ft.—¾" surface rods	con. 1	—@ 15¢	Rod line	750.00
	2 sets swing post castings	"	—@ 11.54	"	23.08
	2 sets hold down castings	"	—@ 11.54	"	23.08
	4 "D" stirrups	"	—@ 1.90	"	7.60
	200 ft. lumber	"	—@ 60.00	"	12.00
	1 Bridgeport Jack	"		"	45.64
	2—1" x 8" Mach. bolts	"	—@ 24¢	for jack	.48
	2—¾" x 6" Mach. bolts	"	—@ 12¢	"	.24
	4—¾" x 16" Mach. bolts	"	—@ 32¢	"	1.28
	2 sets hold down castings	"	—@ 11.54	Rod line	23.08
	2 oak carrier sheaves	"	—@ 40¢	"	.80
	16—¾" x 9" mach. bolts	"	—@ 18¢	"	2.88
	8—¾" x 18" mach. bolts	"	—@ 36¢	"	2.88
	1#—½" W. I. washers	"		"	.12
	116' 9"—10"—32# casing	con. 1	—@ 1.40		*163.45
	1-60 bbl. galv. tank	"			*64.50
	2 days hauling men & rod line material @ 13.50				27.00
	Original subs missing—see voucher analysis for charge ref.				78.00
	Bobtailing rig W#1				25.00
June	40 pcs. 8' corrugated iron	con. 1	—@ 1.30	boiler house	52.00
	40 pcs. 6' corrugated iron	"	—@ 95¢	"	38.00
	20 pcs. 10' corrugated iron	"	—@ 1.60	"	32.00
	462 ft. lumber	"	—@ 60.00 M	"	27.72
	200 ft. lumber	"	—@ 60.00 M	"	12.00
	30 pcs. 8' corrugated iron	"	—@ 1.30	"	39.00
	20 pcs. 10' corrugated iron	"	—@ 1.60	"	32.00
	300# cement	"		"	4.80
	2 pr. 6" strap hinges	"	—@ 20¢	"	.40
	1 day hauling lumber				8.00
	Original subs destroyed—see voucher analysis for charge ref.				109.30
July	Hauling 6 yds. gravel—boiler house				48.00
	181' 2"—12½" casing	con. 2	—@ 2.67		483.72
	126' 11"—12½" casing	Junk	—@ 20¢		*25.38
	300' 11"—6⅝" casing	"	—@ 5¢		*15.05
	144' 10"—8¼" casing	"	—@ 10¢		*14.48
	475'—10" casing	"	—@ 15¢		*71.25
	3375'—¾" surface rods	con. 1			*243.00
	Original subs destroyed—see voucher analysis for charge ref.				52.71
Sept.	Original subs destroyed—see voucher analysis for charge ref.				45.00
Oct.	83' 6"—2" line pipe	con. 1	—@ 27¢	water line	22.55
	222' 9"—2" line pipe	"	—@ 27¢	"	60.14
	2—2" C. I. Stop cocks	"	—@ 2.86	"	5.72
	2—2" tees	"	—@ 52¢	"	1.04
	4—2" plugs	"	—@ 9¢	"	.36
	2—2" x 1" bushings	"	—@ 20¢	"	.40
	487' 3"—2" line pipe	"	—@ 27¢	Gas & water lines	131.56
	83' 8"—1" line pipe	"	—@ 16¢	"	13.39
	1—½" x ¾" bushing	"		"	.08
	8—2" nipples	"	—@ 22¢	"	1.76
	1—1" stop cock	"			1.32
	3—1" tees	"	—@ 17¢	con. boiler	.51
	3—1" st. ells	"	—@ 15¢	"	.45
	3—1" lip unions	"	—@ 44¢	"	1.32

[fol. 551]

Lease Equipment

Oct.	8—1" nipples	con. 1	—@ 11¢	con. boiler	.88
	2—1" ells	"	—@ 15¢	"	.30
	1—1¼" brass check valve	"		"	3.52
	1—1¼" tee	"			.28
	4—1¼" nipples	"	—@ 15¢	"	.60

* Denotes red in copy.

Schedule of Capital Expenditures—Continued

1919						
Oct.	2—1¼" br. globe valves	"	—@ 3.03		"	6.06
	2—1" x 1¼" bushings	"	—@ 15¢		"	.30
	1—1" c-Penberthy injector	"			"	15.29
	1—200# pres. steam gauge	"			"	4.05
	3—1" br. globe valves	"	—@ 2.31		"	6.93
	2—1" st. ells	"	—@ 15¢		"	.30
	2—1" tees	"	—@ 17¢		"	.34
	5—2" st. ells	"	—@ 33¢		"	1.65
	1—2" flange union	"			"	1.38
	2—2" tees	"	—@ 52¢		"	1.04
	2—2" ells	"	—@ 33¢		"	.66
	2—2" plugs	"	—@ 9¢		"	.18
	1—2" br. globe valve	"			"	5.94
	3—1" x 2" bushings	"	—@ 20¢		"	.60
	1—2" C. I. Stop	"			"	2.86
	1—1½" C. I. Stop	"			"	1.76
	1—1½" lip union	"			"	.66
	2#—3" x 4" H. H. gaskets	"	—@ 1.40		"	2.80
	39' 6"—2" line pipe	"	—@ 27¢			10.67
	61' 5"—10" casing	con. 2	—@ 1.24			*76.16
	2 days hauling 2" line pipe @ 8.00					16.00
	Original sub destroyed—see voucher analysis for charge ref.					30.00
Nov.	1 day hauling lumber for tank tops					8.00
	174'8"—2" line pipe	con. 1	—@ 1½¢ (rate of 25½¢ chgd. Exp.)			2.63
	1—1" C—Penberthy injector	"				*51.50
Dec.	Original subs destroyed—see voucher analysis for charge Ref.					27.00
	6628 ft. lumber	con. 1	—@ 60.00 M for power			397.68
	120 pcs. 6' corrugated iron	"	—@ 91¢		"	109.20
	100 pcs. 8' corrugated iron	"	—@ 1.22		"	122.00
	400# nails	"	—@ 8¢		"	32.00
	20# nails	"	—@ 8¢		"	1.60
	10 pr. 6" strap hinges	"	—@ 25¢		"	2.50
	4100# cement	"	—@ 1.98 cwt.		"	81.18
	2—14 qt. galv. pails	"	—@ 75¢		"	1.50
	1—2 gal. W. J. can	"			"	.40
	10—¾" strip couplings	"	—@ 75¢		"	7.50
	4000# cement	"	—@ 1.98 cwt.		"	79.20
	Expenses incurred during March					18.50
	Original subs destroyed—see voucher analysis for charge ref.					296.00
	Original subs destroyed—see voucher analysis for charge ref.					210.00
	Hauling cement, gravel, lumber & water for building new power					211.00
	1—8 12—18' B W U P Nat. pumping power comp.					971.48
	Hauling gravel for new power					122.00
	4—½" x 8" mach. bolts	con. 1	—@ 8¢	for power		.32
	6—⅝" x 6" mach. bolts	"	—@ 8¢		"	.48
	1—¾" ell	"			"	.10
	1—¾" nipple	"			"	.06
	7 ft. ¾" pipe	"	—@ 10¢		"	.70
	75 surface rod poles	"	—@ 90¢	for rod lines		67.50
	5100# cement	"	—@ 1.77 cwt.	for power		90.27
	1 casing ripper	"			"	3.75
	4 pr. 6" strap hinges	"	—@ 28¢		"	1.12
	5# rails	"	—@ 7¢		"	.35
	1—8' M. B. file	"			"	.35
	2—½" wire line clamps	"	—@ 25¢		"	.50
	3—8" S wrenches	"	—@ 1.06		"	3.18
	3—10" S wrenches	"	—@ 1.27		"	3.81
	Lumber, etc. for new power					48.10
	Hauling lumber & grading yard					48.50
	Original subs destroyed—see voucher analysis for charge ref.					696.55
	Lumber for power					10.11

* Denotes red in copy.

[fol. 552]

Lease Equipment

1919						
Dec.	Hauling power material					5.00
	2—8″ R. B. files	con. 1	—@ 35¢	for power		.70
	1 cold chisel	"		"		.35
	94′ 1″—1½″ pipe	"	—@ 20¢	"		18.90
	1—3″ wheel for pipe cutter	"		"		.40
	22′ 3″—3″ pipe	"	—@ 63¢	"		14.02
	20# flat mild steel	"	—@ 10¢	"		2.00
	4—¾″ x 4½″ mach. bolts	"	—@ 11¢	"		.44
	4—¾″ x 12″ mach. bolts	"	—@ 24¢	"		.96
	1—¾″ Tee	"		"		.04
	1—¼″ lip union	"		"		.25
	2—½″ angle valves	"	—@ 1.20	"		2.40
	5—¾″ ells	"	—@ 3¢	"		.15
	2—½″ globe valves	"	—@ 1.20	"		2.40
	1 Electric lantern	"		"		2.25
	2 Hasps & staples	"	—@ 15¢	"		.30
	6—¼″ ells	"	—@ 3¢	"		.18
	6—¼″ st. ells	"	—@ 3¢	"		.18
	1—¼″ lip union	"		"		.15
	2—2″ C. I. stops	"	—@ 2.60	"		5.20
	3—2″ nipples	"	—@ 20¢	"		.60
	Asbestos packing, cup grease & file			"		8.86
	5# waste	"	—@ 25¢	"		1.25
	1 Derrick broom	"		"		2.08
	2 barn door latches			"		1.40
	Hauling material for power					3.25
	1—#12—18′ Nat'l. band wheel power	con. 1				775.00
	2 spark plugs		—@ 1.30			2.60
	5# waste		—@ 25¢			1.25
	2 Dry cell batteries		—@ 70¢			1.40
1920						
Feb.	600# cement		—@ 2.13 cwt.	for boilerhouse		12.78
Apr.	Hauling 10″ casing—2 days @ 15.00					30.00
	Original subs destroyed—see voucher analysis for charge ref.					72.75
May	420′—12½″—45# casing	con. 2	—@ 2.58	Surplus W#4		1,083.60
	680′ 3″—10″—40# casing	"	—@ 2.178	"		1,481.59
	1438′—10″—32# casing	"	—@ 1.92	"		2,760.96
	2365′ 3″—8¼″—28# casing	"	—@ 1.455	"		3,441.44
	2395′ 1″—6⅝″—24# casing	"	—@ 99¢	"		2,371.13
Aug.	1956′—6⅝″ casing	con. 2	—@ 1.095			*2,141.82
	1520′—8¼″ casing	"	—@ 1.62			*2,462.40
	1000′—10″ casing	"	—@ 2.05			*2,050.00
	390′—12½″ casing	"	—@ 2.853			*1,112.67
Sept.	1 da. hauling 2″ line pipe @ 11.00					11.00
	483′ 7″—6⅝″ casing @ 1.06					*512.59
	167′ 2″—10″ Casing @ 1.86					*510.94
	88′ 11″—12½″ casing @ 2.58					*229.41
Oct.	3 da. hauling lumber @ 11.00					33.00
	340′ 7″—2″ Tubing	con. 2	—@ 24¢			*81.74
Nov.	210′—2″ tubing	"	—@ 27¢			56.70
	571′ 6″—10″ casing	"	—@ 2.055			*1,174.43
1921						
Jan.	3 da. building engine house W#2 @ 5.00					15.00
	9 meals @ 1.00					9.00
Feb.	2400′ 60 pcs. Lbr. 2 x 12 x 20	con. 1	—@ 45.00			108.00
	15 pcs. 6′ corrugated iron 195′					
	15 pcs. 8′ " 260′					
	15 pcs. 10′ " 325′					
	780′	con. 1	—@ 8.10			63.18
	2 kegs 16 d com nails	"	—@ 8.10			16.20
	4 pr. 10″ strap hinges	"	—@ 90¢			3.60

* Denotes red in copy.

Schedule of Capital Expenditures—Continued

[fol. 553]

Lease Equipment

1922		
June	2 da. laying 2" gas line @ 4.00	8.00
	½ da. laying 2" gas line @ 4.00	2.00
	1 day laying 2" gas line	4.00
	½ da. laying 2" gas line @ 4.25	2.12
	1 da. laying 2" gas line	4.00
	2 da. laying 2" gas line @ 4.00	8.00
July	1 da. dig water line ditch	4.00
	2 da. putting up jack @ 4.00	8.00
	4 da. putting up jack & rod line @ 4.25	17.00
	4 da. putting up jack & rod line @ 4.25	17.00
	1 50 bbl. galv. tank—400$ @ 40¢	1.60
Sept.	97' 10"—10" casing con. 1—@1.47	143.81
1928		
Feb.	3/46 proportion of—3-10" recording thermometers for gas drive—234.78	15.31
	3/46 of 31.7% proportion of Elk Basin Gas Drive Investment—Dec.	256.28
June	3/46 of 31.7% proportion of Elk Basin Gas Drive Investment—Apr.	6.40
Aug.	3/46 of 31.7% proportion of Elk Basin Gas Drive Investment—June	.99
Sept.	3/46 of 31.7% proportion of Elk Basin Gas Drive Investment—July	1.13
Nov.	3/46 of 31.7% proportion of Elk Basin Gas Drive Investment—Sept.	8.92
1929		
Jan.	3/46 of 31.7% proportion of Elk Basin Gas Drive Investment—Nov.	*2.65
Feb.	3/46 of 31.7% proportion of Elk Basin Gas Drive Investment—Dec.	1.23
1932		
Dec.	1—64 ft. wood std. rig—Junk	*No Value
1937		
Mar.	1—30 H. P. Nat'l. Sup. boiler $8128—$3 con.	*150.00
1939		
May	Original card missing—see farm summary book for charge ref.	47.36
1941		
Oct.	Proportion of credit for sale of small building from old camp site 3/46 of 10.00	*.65
1942		
Feb.	Misc. charges for Feb.—detail in Casper Office	2.28
Mar.	Misc. credits for Mar.— " " "	*2.15
1943		
Apr.	Misc. charges for Apr.—detail in Casper Office	.91
Aug.	Misc. charges for Aug.— " " "	8.29
1944		
July	Misc. credits for July—detail in Casper Office	*50.00
Oct.	Misc. credits for Oct.— " " "	*13.80
Nov.	Misc. credits for Nov.— " " "	*31.20
		15,446.94

* Denotes red in copy.

[fol. 554] The Ohio Oil Company

Producing and Merchandising Department

Schedule of Direct Operating Expenses

By Months for State Land Sec. 36-58-100

Elk Basin Field, Wyoming

1917

Month	Amount
November	31.15
December	233.03
Total for Year	264.18

1918

Month	Amount
January	137.59
February	70.25
March	82.98
April	129.19
May	314.45
June	175.83
July	439.15
August	164.07
September	183.71
October	327.19
November	284.04
December	399.61
Total for Year	2,708.06

1919

Month	Amount
January	562.99
February	356.94
March	312.37
April	364.10
May	207.32
June	568.29
July	333.34
August	854.97
September	572.89

October	394.95
November	493.29
December	564.37
Total for Year	5,585.82

1920

Month	Amount
January	411.44
February	958.34
March	504.12
April	1,115.89
May	397.91
June	369.74
July	614.37
August	294.86
September	466.96
October	577.74
November	277.45
December	500.97
Total for Year	6,489.79

1921

Month	Amount
January	1,200.27
February	700.00
March	595.52
April	563.89
May	312.46
June	262.35
July	183.22
August	149.46
September	511.34
October	352.17
November	232.13
December	201.01
Total for Year	5,263.82

1922

Month	Amount
January	627.00
February	701.58
March	393.53

April	322.63
May	324.54
June	410.60
July	394.21
August	692.15
September	1,511.96
October	1,135.40
November	467.60
December	764.78
Total for Year	7,745.98

1923

Month	Amount
January	583.89
February	287.32
March	428.71
April	316.68
May	825.79
June	333.46
July	301.04
August	533.87
September	252.90
October	234.09
November	206.06
December	284.60
Total for Year	4,588.41

[fol. 554] 1924

Month	Amount
January	356.64
February	242.97
March	311.17
April	205.13
May	382.63
June	318.81
July	170.78
August	336.14
September	209.81
October	226.33
November	425.75
December	211.87
Total for Year	3,398.03

1925

Month	Amount
January	328.51
February	321.21
March	181.63
April	191.78
May	216.81
June	641.45
July	503.19
August	248.29
September	315.16
October	246.43
November	151.73
December	310.26
Total for Year	3,656.45

1926

Month	Amount
January	240.41
February	171.01
March	224.55
April	220.47
May	238.24
June	199.21
July	224.98
August	211.40
September	212.81
October	178.52
November	244.55
December	312.06
Total for Year	2,678.21

1927

Month	Amount
January	947.62
February	113.85
March	125.39
April	345.17
May	129.44
June	227.62
July	197.15
August	309.99

September	311.23
October	163.42
November	122.84
December	155.18
Total for Year	3,148.90

1928

Month	Amount
January	148.97
February	179.28
March	277.01
April	150.87
May	233.59
June	206.40
July	149.83
August	214.94
September	152.92
October	320.01
November	209.13
December	182.12
Total for Year	2,425.07

1929

Month	Amount
January	154.63
February	219.82
March	149.96
April	178.62
May	368.01
June	671.97
July	215.60
August	136.18
September	228.68
October	178.88
November	212.74
December	226.39
Total for Year	2,941.48

1930

Month	Amount
January	277.14
February	204.63
March	256.53
April	170.00
May	100.59
June	197.22
July	100.38
August	148.82
September	152.45
October	127.09
November	181.83
December	136.38
Total for Year	2,053.06

1931

Month	Amount
January	171.32
February	126.35
March	300.45
April	106.89
May	133.71
June	104.63
July	83.20
August	76.13
September	130.88
October	111.64
November	105.30
December	128.01
Total for Year	1,578.51

[fol. 556] 1932

Month	Amount
January	89.73
February	85.88
March	97.79
April	85.03
May	86.32
June	130.60
July	140.10
August	70.32

September	235.75
October	115.49
November	89.15
December	389.60
Total for Year	1,615.76

1933

Month	Amount
January	94.00
February	77.50
March	101.25
April	114.75
May	64.06
June	33.08
July	58.93
August	58.53
September	93.70
October	48.29
November	77.78
December	52.99
Total for Year	874.86

1934

Month	Amount
January	92.39
February	94.58
March	62.51
April	34.00
May	69.95
June	72.21
July	51.72
August	38.33
September	14.29
October	75.76
November	116.56
December	46.97
Total for Year	769.27

1935

Month	Amount
January	154.66
February	33.10
March	184.78
April	2.48
May	16.21
June	159.72
July	242.90
August	536.83
September	127.12
October	255.65
November	36.42
December	125.51
Total for Year	1,875.38

1936

Month	Amount
January	51.04
February	92.10
March	69.06
April	42.74
May	33.97
June	40.26
July	70.22
August	106.15
September	81.15
October	89.83
November	26.72
December	52.60
Total for Year	755.84

1937

Month	Amount
January	51.22
February	15.76
March	62.90
April	42.49
May	59.26
June	213.80
July	119.64
August	29.87

September	210.44
October	69.39
November	80.29
December	37.49
Total for Year	992.55

1938

Month	Amount
January	27.66
February	33.33
March	19.04
April	16.27
May	20.72
June	13.06
July	40.34
August	195.75
September	113.19
October	154.20
November	70.16
December	57.63
Total for Year	761.35

1939

Month	Amount
January	35.82
February	133.09
March	*9.90
April	67.10
May	79.26
June	65.46
July	71.80
August	54.78
September	55.97
October	157.32
November	56.18
December	35.41
Total for Year	802.29

* Indicates red figures.

[fol. 557]

1940

Month	Amount
January	55.96
February	29.69
March	57.53
April	41.41
May	57.40
June	50.38
July	75.96
August	110.64
September	70.21
October	73.83
November	53.86
December	19.98
Total for Year	694.15

1941

Month	Amount
January	33.51
February	38.62
March	39.72
April	31.13
May	40.29
June	41.02
July	90.63
August	256.86
September	183.60
October	301.21
November	104.56
December	79.26
Total for Year	1,240.41

1942

Month	Amount
January	98.88
February	102.94
March	373.85
April	59.69
May	100.68
June	45.01
July	73.87
August	79.86

September	69.51
October	34.34
November	83.35
December	69.55
Total for Year	1,191.53

1943

Month	Amount
January	62.59
February	47.00
March	165.53
April	60.02
May	192.40
June	197.36
July	148.92
August	200.77
September	306.66
October	106.12
November	163.15
December	72.57
Total for Year	1,723.09

1944

Month	Amount
January	100.41
February	62.33
March	167.56
April	440.48
May	609.21
June	85.04
July	188.52
August	108.18
September	112.67
October	113.07
November	97.17
December	176.84
Total for Year	2,261.48
TOTAL TO DATE	70,083.73

[fol. 558]

The Ohio Oil Company
The Producing and Merchandising Department
Schedule of Taxes
State Land Sec. 36-58-100, Elk Basin Field, Wyoming

Park County, Wyoming — S. D. #1, Elk Basin

Year	Personal Tax	Production Tax	Total Tax
1918	7.48	5.52	13.00
1919	52.60	107.37	159.97
1920	45.20	256.48	301.68
1921	54.18	192.23	246.41
1922	109.04	180.65	289.69
1923	107.90	160.22	268.12
1924	114.75	154.49	269.24
1925	60.57	144.35	204.92
1926	73.65	220.81	294.46
1927	59.98	250.23	310.21
1928	59.13	114.82	173.95
1929	64.41	117.60	182.01
1930	67.66	133.13	200.79
1931	73.04	139.50	212.54
1932	60.46	80.20	140.66
1933	53.10	70.47	123.57
1934	51.29	70.10	121.39
1935	44.93	84.73	129.66
1936	40.74	31.14	71.88
1937	41.94	53.04	94.98
1938	34.61	45.13	79.74
1939	38.31	17.95	56.26
1940	39.20	36.24	75.44
1941	35.25	34.48	69.73
1942	31.41	29.82	61.23
1943	51.93	37.16	89.09
1944	50.13	26.65	76.78
Total	1,522.89	2,794.51	4,317.40

The Ohio Oil Company
Producing and Merchandising Department
Schedule of Oil Runs
State Land Sec. 36-58-100, Elk Basin Field, Wyoming

Year	Oil Earnings							
	Gross		Royalty Interest		Ohio's Interest		Steam Earnings	Ohio's Total Earning
	Barrels	Value	Barrels	Value	Barrels	Value		
1917	341.80	581.07	34.18	58.11	307.62	522.96	3.42	526.38
1918	6,754.29	12,409.10	675.43	1,240.91	6,078.86	11,168.19	61.48	11,229.67
1919	10,546.72	21,071.82	1,054.67	2,107.18	9,492.05	18,964.64	368.29	19,332.93
1920	7,275.14	21,902.47	727.51	2,190.25	6,547.63	19,712.22	64.52	19,776.74
1921	6,011.73	9,646.51	601.17	964.65	5,410.56	8,681.86	60.07	8,741.93
1922	5,521.84	8,741.16	552.18	874.12	4,969.66	7,867.04	63.87	7,930.91
1923	4,646.43	7,767.46	464.64	776.75	4,181.79	6,990.71	46.48	7,037.19
1924	5,221.73	8,500.44	522.17	850.04	4,699.56	7,650.40	50.45	7,700.85
1925	5,449.67	10,632.67	544.97	1,063.27	4,904.70	9,569.40	56.30	9,625.70
1926	5,727.43	12,816.09	572.74	1,281.61	5,154.69	11,534.48	57.27	11,591.75
1927	4,158.03	5,920.90	415.80	592.09	3,742.23	5,328.81	41.57	5,370.38
1928	3,853.53	5,363.22	385.35	536.32	3,468.18	4,826.90	38.54	4,865.44
1929	3,754.50	5,839.88	375.45	583.99	3,379.05	5,255.89	37.53	5,293.42
1930	3,767.84	5,596.79	376.78	559.68	3,391.06	5,037.11	37.67	5,074.78
1931	3,807.23	3,546.70	380.72	354.67	3,426.51	3,192.03	38.09	3,230.12
1932	2,801.36	3,032.71	289.50	312.58	2,511.77	2,720.13	27.91	2,748.04
1933	3,394.63	2,767.89	424.33	345.99	2,970.30	2,421.90	34.05	2,455.95
1934	3,253.01	3,838.54	406.63	479.82	2,846.38	3,358.72	28.62	3,387.34
1935	1,267.67	1,495.83	158.46	186.98	1,109.21	1,308.85	12.67	1,321.53
1936	2,011.03	2,458.80	251.38	307.35	1,759.65	2,151.45	20.09	2,171.54
1937	1,567.54	2,021.50	195.94	252.69	1,371.60	1,768.81	15.69	1,784.50
1938	744.97	727.57	93.12	90.95	651.85	636.62	7.45	644.07
1939	1,759.42	1,583.49	219.93	197.94	1,539.49	1,385.55	17.61	1,403.16
1940	1,862.19	1,676.02	232.77	209.50	1,629.42	1,466.52	18.61	1,485.13
1941	1,693.69	1,619.57	211.71	202.45	1,481.98	1,417.12	16.93	1,434.05
1942	1,770.59	1,770.59	221.32	221.32	1,549.27	1,549.27	17.70	1,566.97
1943	1,342.72	1,342.72	167.84	167.84	1,174.88	1,174.88	13.43	1,188.31
1944	2,121.87	2,378.03	265.23	297.25	1,856.64	2,080.78	11.68	2,092.46
Total	102,428.60	167,049.54	10,822.01	17,306.30	91,606.59	149,743.24	1,267.99	151,011.23

[fol. 560]

The Ohio Oil Company
Producing and Merchandising Department
Schedule of Gross Oil Run and Price per Barrel for the Period
November, 1917, to December, 1944, Inclusive
State Land Sec. 36-58-100, Elk Basin Field, Wyoming

	Barrels	Price	Value
1917			
November	160.20	1.70	272.34
December	*181.60	1.70	308.72
Total	341.80		581.06
1918			
January	345.82	1.70	587.89
February	173.60	1.70	295.12
March	56.28	1.70	95.68
	36.00	1.85	66.60
April	204.12	1.85	377.62
May	267.60	1.85	495.06
June	564.78	1.85	1,044.84
July	597.14	1.85	1,104.71
August	457.50	1.85	846.38
September	969.26	1.85	1,793.13
October	1,372.54	1.85	2,539.20
November	768.70	1.85	1,422.10
December	940.94	1.85	1,740.74
Total	6,754.28		12,409.07
1919			
January	767.39	1.85	1,419.67
	557.96	2.00	1,115.92
February	898.30	2.00	1,796.60
March	1,348.22	2.00	2,696.44
April	749.10	2.00	1,498.20
May	758.78	2.00	1,517.56
June	623.42	2.00	1,246.84
July	904.64	2.00	1,809.28
August	949.92	2.00	1,899.84
September	754.54	2.00	1,509.08
October	497.94	2.00	995.88
November	415.46	2.00	830.92
December	1,081.00	2.00	2,162.00
	55.00	2.25	123.76
	185.05	2.50	462.63
Total	10,546.72		21,084.62
1920			
January	230.52	2.35	541.72
	329.19	2.60	855.89
February	457.38	2.60	1,189.18
March	337.14	2.85	960.85
	432.16	3.10	1,361.39
April	1,014.01	3.10	3,143.43
May	806.04	3.10	2,498.72
June	609.36	3.10	1,889.01
July	436.52	3.10	1,353.22
August	306.56	3.10	950.34
September	501.48	3.10	1,554.59
October	727.59	3.10	2,255.53
November	619.03	3.10	1,918.99
December	461.17	3.10	1,429.63
Total	7,275.15		21,902.49

[Fol. 561]

The Ohio Oil Company
Producing and Merchandising Department
Schedule of Gross Oil Run and Price Per Barrel for the Period
November, 1917, to December, 1944 Inclusive
State Land Sec. 36-58-100, Elk Basin Field, Wyoming

	Barrels	Price	Value
1921			
January	400.32	[illegible].10	1,240.99
	116.27	2.[illegible]0	302.30
February	175.74	2.25	395.41
	423.51	1.75	741.14
March	624.52	1.75	1,092.91
April	822.26	1.75	1,438.95
May	122.96	1.75	215.19
	499.88	1.50	749.83
June	307.42	1.50	461.13
	118.64	1.25	148.31
	293.28	1.15	337.27
July	303.12	1.00	303.12
August	505.44	1.00	505.44
September	675.92	1.00	675.92
October	320.10	1.45	464.14
November	.....	....	.....
December	302.35	1.90	574.47
Total	6,011.73		9,646.52
1922			
January	.....	....	.....
February	451.88	1.90	858.57
March	414.20	1.90	786.98
April	474.82	1.90	902.16
May	645.50	1.90	1,226.46
June	424.02	1.90	805.64
July	328.40	1.90	623.96
	200.28	1.65	330.46
August	125.18	1.40	175.25
	511.42	1.20	613.71
September	616.28	1.20	739.54
October	440.16	1.20	528.19
November	508.65	1.20	610.38
December	105.73	1.20	126.87
	275.33	1.50	412.90
Total	5,521.85		8,741.16
1923			
January	238.97	1.50	358.45
	189.66	1.70	322.42
	114.43	1.80	205.97
February	187.43	2.00	374.86
	117.27	2.10	246.26
March	619.72	2.10	1,301.41
April	384.47	2.10	807.39
	124.00	2.00	248.00
May	312.52	1.70	531.28
June	446.80	1.70	759.56
July	192.24	1.70	326.80
August	316.24	1.70	537.60
September	316.24	1.70	537.60
	121.92	1.35	164.60
October	322.48	1.35	435.35
November	313.24	.95	297.57
December	328.82	.95	312.38
Total	4,646.45		7,767.50

[fol. 562]

The Ohio Oil Company
Producing and Merchandising Department
Schedule of Gross Oil Run and Price per Barrel for the Period
November, 1917, to December, 1944, Inclusive
State Land Sec. 36–58–100, Elk Basin Field, Wyoming

	Barrels	Price	Value
1924			
January	286.93	.95	272.58
	173.56	1.55	269.02
February	322.91	1.80	581.24
March	447.93	1.95	873.46
April	650.83	1.95	1,269.12
May	523.06	1.95	1,019.97
June	441.98	1.95	861.86
July	317.88	1.95	619.87
	112.08	1.70	190.54
	85.52	1.45	124.00
August	439.76	1.45	637.65
September	311.92	1.45	452.28
	58.72	1.20	70.46
October	562.99	1.20	675.59
November	307.00	1.20	368.40
December	178.67	1.20	214.40
Total	5,221.74		8,500.44
1925			
January	368.15	1.20	441.78
February	287.65	1.65	474.62
	293.64	2.00	587.28
March	177.25	2.00	354.50
	102.74	2.15	220.89
April	599.44	2.15	1,288.81
May	296.01	2.15	636.42
June	619.00	2.15	1,330.85
July	319.54	2.15	687.01
August	306.56	2.15	659.10
	193.58	1.90	367.80
September	321.60	1.90	611.04
October	611.05	1.90	1,161.00
November	535.50	1.90	1,017.45
December	417.96	1.90	794.12
Total	5,449.67		10,632.67
1926			
January	613.12	1.90	1,164.93
February	485.94	2.15	1,044.77
March	606.52	2.15	1,304.02
April	607.61	2.15	1,306.36
May	117.00	2.15	251.55
	325.46	2.40	781.10
June	525.74	2.40	1,261.78
July	432.80	2.40	1,038.72
August	315.40	2.40	756.96
September	526.87	2.40	1,264.49
October	549.13	2.40	1,317.91
November	199.51	2.40	478.82
	244.14	2.00	488.28
December	178.19	2.00	356.38
Total	5,727.43		12,816.07

[fol. 563]

The Ohio Oil Company
Producing and Merchandising Department
Schedule of Gross Oil Run and Price per Barrel for the Period
November, 1917, to December, 1944, Inclusive
State Land Sec. 36-58-100, Elk Basin Field, Wyoming

	Barrels	Price	Value
1927			
January	119.36	2.00	238.72
February	306.91	2.00	613.82
	188.40	1.75	329.70
March	118.11	1.55	183.07
	198.90	1.33	264.54
April	318.62	1.33	423.76
May	430.16	1.33	572.11
June	298.20	1.33	396.61
July	318.48	1.33	423.58
August	317.88	1.33	422.78
September	318.98	1.33	424.24
October	510.37	1.33	678.79
November	410.81	1.33	546.38
December	302.87	1.33	402.82
Total	4,158.05		5,920.92
1928			
January	185.39	1.33	246.57
February	303.97	1.33	404.28
March	492.98	1.33	655.66
April	318.42	1.33	423.50
May	448.44	1.33	596.43
June	200.28	1.33	266.37
July	317.28	1.33	421.98
August	443.06	1.48	655.73
September	205.64	1.48	304.35
October	318.37	1.48	471.19
November	316.53	1.48	468.46
December	303.18	1.48	448.71
Total	3,853.54		5,363.23
1929			
January	300.17	1.48	444.25
	108.61	1.36	147.71
February	.....	.....	.....
March	344.96	1.36	469.15
April	394.52	1.36	536.55
May	200.28	1.36	272.38
	200.28	1.65	330.46
June	205.64	1.65	339.31
July	397.88	1.65	656.50
August	400.56	1.65	660.92
September	389.84	1.65	643.24
October	395.51	1.65	652.59
November	246.03	1.65	405.95
December	170.22	1.65	280.86
Total	3,754.50		5,839.87
1930			
January	168.74	1.65	278.42
February	170.46	1.65	281.26

[fol. 564]

The Ohio Oil Company
Producing and Merchandising Department
Schedule of Gross Oil Run and Price per Barrel for the Period
November, 1917, to December, 1944, Inc'l.
State Land Sec. 36-58-100, Elk Basin Field, Wyoming

	Barrels	Price	Value
1930			
Bebruary	191.02	1.45	276.98
March	178.94	1.45	259.46
April	186.47	1.45	270.38
	194.92	1.55	302.13
May	389.84	1.55	604.25
June	387.16	1.55	600.10
July	192.24	1.55	297.97
August	387.16	1.55	600.10
September	389.84	1.55	604.25
October	192.24	1.55	297.97
	182.81	1.25	228.51
November	183.87	1.25	229.84
December	372.13	1.25	465.16
Total	3,767.84		5,596.78
1931			
January	353.47	1.25	441.84
February	176.88	1.25	221.10
March	188.88	1.25	236.10
	185.01	.90	166.51
April	371.87	.90	334.68
May	197.60	.90	177.84
June	200.28	.90	180.25
	202.96	.62	125.84
July	205.64	.62	127.50
	197.60	.65	128.44
August	197.60	.65	128.44
September	395.20	.90	355.68
October	389.87	.90	350.88
November	181.15	1.05	190.21
December	363.23	1.05	381.39
Total	3,807.24		3,546.70
1932			
January	182.25	1.05	191.36
February	351.46	1.05	369.03
March	178.01	1.05	186.91
April	192.00	1.05	201.60
	200.28	1.20	240.34
May	200.28	1.20	240.34
June	392.52	1.10	431.77
July	205.64	1.10	226.20
August	405.92	1.10	446.51
September	114.88	1.10	126.37
October	.....	....	.....
November	183.18	1.10	201.50
December	184.44	.87	160.46
Total	2,790.86		3,022.39
1933			
January	177.28	.87	154.23
February	360.17	.62	223.31
March	192.66	.62	119.45

[fol. 565]

The Ohio Oil Company

Producing and Merchandising Department

Schedule of Gross Oil Run and Price per Barrel for the Period

November, 1917, to December, 1944, Inc'l.

State Land Sec. 36-58-100, Elk Basin Field, Wyoming

1933	Barrels	Price	Value
April	390.25	.62	241.96
May	197.60	.62	122.51
June	200.28	.35	70.10
July	189.56	.62	117.53
	194.92	.72	140.34
August	194.92	.72	140.34
September	200.28	.82	164.23
	202.96	1.07	217.17
October	197.60	1.18	233.17
November	351.62	1.18	414.91
December	355.04	1.18	418.95
Total	3,405.14		2,778.20
1934			
January	174.49	1.18	205.90
February	176.98	1.18	208.84
March	365.25	1.18	431.00
April	379.81	1.18	448.18
May	400.51	1.18	472.60
June	400.54	1.18	472.64
July	362.48	1.18	427.73
August	200.90	1.18	237.06
September	494.63	1.18	583.66
October	109.43	1.18	129.13
November	.....	....	.....
December	187.99	1.18	221.83
Total	3,253.01		3,838.57
1935			
January	477.81	1.18	563.82
February	110.97	1.18	130.94
March	.....	....	.....
April	.....	....	.....
May	.....	....	.....
June	291.40	1.18	343.85
July	75.06	1.18	88.57
August	119.26	1.18	140.73
September	136.05	1.18	160.54
October	57.13	1.18	67.41
November	.....	....	.....
December	.....	....	.....
Total	1,267.68		1,495.86
1936			
January	141.60	1.18	167.09
	69.06	1.28	88.40
February	143.97	1.28	184.28
March (Missing)	149.43	1.28	191.27
April	148.25	1.28	189.76
May	70.56	1.28	90.31
June	138.59	1.28	177.40
July	138.10	1.28	176.77
	68.88	1.18	81.28

[fol. 566]

The Ohio Oil Company
Producing and Merchandising Department

Schedule of Gross Oil Run and Price per Barrel for the Period
November, 1917, to December, 1944, Inclusive
State Land Sec. 36-58-100, Elk Basin Field, Wyoming

	Barrels	Price	Value
1936			
August	124.59	1.18	147.02
September	208.14	1.18	245.61
October	208.29	1.18	245.78
November	194.22	1.18	229.18
December	207.35	1.18	244.67
Total	2,011.03		2,458.82
1937			
January	136.09	1.18	160.59
February	207.21	1.30	269.37
March	137.11	1.30	178.24
April	215.35	1.30	279.96
May	208.41	1.30	270.93
June	139.60	1.30	181.48
July	76.01	1.30	98.81
August	147.83	1.30	192.18
September	76.31	1.30	99.20
October	76.76	1.30	99.79
November	146.87	1.30	190.93
December	.....	....	.....
Total	1,567.55		2,021.48
1938			
January	.....	....	.....
February	.....	....	.....
March	.....	....	.....
April	.....	....	.....
May	.....	....	.....
June	.....	....	.....
July	.....	....	.....
August	228.36	1.05	239.78
September	75.92	1.05	79.72
October	76.09	1.05	79.89
	72.13	.90	64.92
November	145.62	.90	131.06
December	146.86	.90	132.17
Total	744.98		727.54
1939			
January	145.77	.90	131.19
February	72.34	.90	65.11
March	140.82	.90	126.74
April	143.33	.90	129.00
May	148.64	.90	133.78
June	149.41	.90	134.47
July	75.63	.90	68.07
August	221.03	.90	198.93
September	148.19	.90	133.37
October	147.03	.90	132.33
November	221.48	.90	199.33
December	145.75	.90	131.18
Total	1,759.42		1,583.50

[fol. 567]

The Ohio Oil Company
Producing and Merchandising Department
Schedule of Gross Oil Run and Price per Barrel for the Period
November, 1917, to December, 1944, Inclusive
State Land Sec. 36-58-100, Elk Basin Field, Wyoming

	Barrels	Price	Value
1940			
January	224.36	.90	201.92
February	147.59	.90	132.83
March	147.98	.90	133.18
April	226.94	.90	204.25
May	75.50	.90	67.95
June	76.65	.90	68.99
July	221.18	.90	199.06
August	147.23	.90	132.51
September	149.15	.90	134.24
October	226.21	.90	203.59
November	72.05	.90	64.85
December	147.37	.90	132.63
Total	1,862.21		1,676.00
1941			
January	72.34	.90	65.11
February	221.30	.90	199.17
March	146.21	.90	131.59
April	150.85	.90	135.77
May	150.48	.90	135.43
June	143.86	1.00	143.86
July	75.49	1.00	75.49
August	224.64	1.00	224.64
September	75.17	1.00	75.17
October (Missing)	221.09	1.00	221.09
November	72.89	1.00	72.89
December	139.37	1.00	139.37
Total	1,693.69		1,619.58
1942			
January	72.26	1.00	72.26
February	149.86	1.00	149.86
March	213.71	1.00	213.71
April	143.92	1.00	143.92
May	221.75	1.00	221.75
June	150.52	1.00	150.52
July	147.86	1.00	147.86
August	74.20	1.00	74.20
September	152.11	1.00	152.11
October	148.91	1.00	148.91
November	146.63	1.00	146.63
December	148.86	1.00	148.86
Total	1,770.59		1,770.59
1943			
January	.....	....	.....
February (Missing)	142.18	1.00	142.18
March	140.26	1.00	140.26
April	153.12	1.00	153.12
May	75.25	1.00	75.25
June	149.97	1.00	149.97
July	74.65	1.00	74.65
August (Missing)	148.09	1.00	148.09

[fol. 568]

The Ohio Oil Company

Producing and Merchandising Department
Schedule of Gross Oil Run and Price per Barrel for the Period
November, 1917, to December, 1944, Inclusive
State Land Sec. 36–58–100, Elk Basin Field, Wyoming

	Barrels	Price	Value
1943			
September (Missing)	76.69	1.00	76.69
October	152.61	1.00	152.61
November	152.49	1.00	152.49
December	77.41	1.00	77.41
Total	1,342.72		1,342.72
1944			
January	145.04	1.00	145.04
February	72.04	1.00	72.04
March	147.27	1.00	147.27
April	290.05	1.00	290.05
May	219.53	1.00	219.53
June	294.41	1.00	294.41
July	221.74	1.00	221.74
August	221.33	*1.35	298.80
September	218.86	1.35	295.46
October	146.68	1.35	198.02
November	75.28	1.35	101.63
December	69.67	1.35	94.05
Total	2,121.90		2,378.04
Grand Total	102,428.77		167,062.39

* Price includes 35¢ per bbl. subsidy.

[fol. 569] Elk Basin—Light

Crude Prices

Date of Change	Price
November 1, 1917	$1.70
March 21, 1918	1.85
November 21, 1918	2.10
December 23, 1918	2.35
January 13, 1920	2.60
March 2, 1920	2.85
March 16, 1920	3.10
January 25, 1921	2.60
February 1, 1921	2.25
February 5, 1921	2.00
February 10, 1921	1.75
May 3, 1921	1.50
June 14, 1921	1.25
June 17, 1921	1.15
June 27, 1921	1.00
October 4, 1921	1.25
October 8, 1921	1.45
November 8, 1921	1.90
July 18, 1922	1.65
July 19, 1922	1.40
August 4, 1922	1.20
December 23, 1922	1.50
January 15, 1923	1.60
January 18, 1923	1.70
January 29, 1923	1.80
February 8, 1923	1.90
February 10, 1923	2.00
February 17, 1923	2.10
April 24, 1923	2.00
May 3, 1923	1.90
May 7, 1923	1.80
May 14, 1923	1.70
September 21, 1923	1.35
November 9, 1923	.95
January 10, 1924	1.40
January 21, 1924	1.55
February 5, 1924	1.80

Date of Change	Price
March 10, 1924	1.95
July 18, 1924	1.70
July 29, 1924	1.55
July 30, 1924	1.45
September 19, 1924	1.20
January 23, 1925	1.45
January 31, 1925	1.65
February 13, 1925	2.00
March 10, 1925	2.15
August 28, 1925	1.90
February 2, 1926	2.15
May 17, 1926	2.40
November 17, 1926	2.00
February 23, 1927	1.75
March 7, 1927	1.55
March 12, 1927	1.33
July 27, 1928	1.48
January 25, 1929	1.36
May 21, 1929	1.65
February 15, 1930	1.45
April 11, 1930	1.55
October 28, 1930	1.25
March 5, 1931	.90
June 2, 1931	.62
July 10, 1931	.47
July 25, 1931	.65
August 18, 1931	.80
August 24, 1931	.90
November 3, 1931	1.05
April 11, 1932	1.20
June 1, 1932	1.10
December 16, 1932	.87
January 18, 1933	.62
May 20, 1933	.35
June 17, 1933	.62
July 8, 1933	.72
August 25, 1933	.82
September 6, 1933	.92
September 9, 1933	1.07
September 29, 1933	1.18
January 9, 1936	1.28

Date of Change	Price
July 20, 1936	1.18
January 28, 1937	1.30
July 8, 1938	1.05
October 11, 1938	.90
May 20, 1941	1.00 *

* 35¢ Subsidy After August 1, 1944.

Schedule of Overhead Costs
State Land Section 36, 1917–1944, Inc.

Year	Capital expenditure On Sec. 36 (1)	Operating expense On Sec. 36 (2)	Total columns 1 & 2 (3)	Capital expenditures & operating expenses for entire State of Wyoming (4)	Ratio columns 4 to 3 (5)	Overhead expense for entire State of Wyoming (6)	Overhead expense for State land Section 36 Col. 5 x 6 (7)
1917	21,476.70	642.61	22,010.88	2,782,387.00	.791	99,020.00	783.00
1918	55,346.29	2,708.06	58,054.35	3,464,869.00	1.676	252,051.00	4,224.00
1919	26,962.19	5,585.82	32,548.01	4,269,991.00	.762	332,737.00	2,688.00
1920	13,069.55	6,489.79	19,559.34	2,631,962.00	.743	352,542.00	2,619.00
1921	214.98	5,263.82	5,478.80	2,324,961.00	.236	397,977.00	939.00
1922	1,303.20	7,745.98	9,049.18	2,805,005.00	.323	302,793.00	978.00
1923	*96.80	4,588.41	4,491.61	2,828,889.00	.159	293,532.00	467.00
1924	.....	3,398.03	3,398.03	1,519,043.00	.224	350,250.00	785.00
1925	.....	3,656.45	3,656.45	1,100,199.00	.332	277,296.00	921.00
1926	.....	2,678.21	2,678.21	1,364,194.00	.195	200,949.00	392.00
1927	.....	3,148.90	3,148.90	1,154,029.00	.273	213,344.00	582.00
1928	\289.08	2,425.07	2,714.15	1,051,729.00	.258	206,502.00	533.00
1929	*1.42	2,941.48	2,940.06	1,073,567.00	.274	181,279.00	497.00
1930	.....	2,053.06	2,053.06	804,143.00	.255	169,616.00	433.00
1931	.....	1,578.51	1,578.51	249,770.00	.632	149,608.00	946.00
1932	.....	1,615.76	1,615.76	287,831.00	.561	118,623.00	665.00
1933	.....	874.86	874.86	172,534.00	.507	138,707.60	703.00
1934	.....	769.27	769.27	283,306.00	.272	160,602.00	437.00
1935	.....	1,875.38	1,875.38	487,055.00	.385	283,041.00	1,090.00
1936	.....	753.84	753.84	1,620,301.00	.047	314,587.00	148.00
1937	*150.00	992.55	842.55	2,105,300.00	.040	293,931.00	118.00
1938	.....	761.35	761.35	634,843.00	.120	255,292.00	306.00
1939	47.36	802.29	849.65	1,237,382.00	.069	213,190.00	147.00
1940	.....	694.15	694.15	1,171,170.00	.059	283,259.00	167.00
1941	*.65	1,240.41	1,239.76	1,357,833.00	.091	296,473.00	270.00
1942	.13	1,191.53	1,191.66	3,102,087.00	.038	277,079.00	103.00
1943	9.20	1,723.09	1,732.29	3,274,890.00	.053	427,808.00	227.00
1944	*95.00	2,261.48	2,166.48	4,372,947.00	.050	582,742.00	291.00
	118,644.81	70,083.73	188,728.34	49,530,237.00		7,444,830.00 15.03%	22,401.00 11.90%

* Deletion red in copy.

[fol. 571] [File endorsement omitted]

IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 10, Original

UNITED STATES OF AMERICA, Plaintiff,

vs.

STATE OF WYOMING and the OHIO OIL COMPANY, Defendants

REPORT OF NAT. U. BROWN, SPECIAL MASTER—Filed October 14, 1946

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[fol. 574] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1946

No. 10 Original

UNITED STATES OF AMERICA, Plaintiff,

vs.

STATE OF WYOMING and the OHIO OIL COMPANY, Defendants

REPORT OF NAT. U. BROWN, SPECIAL MASTER

This action was commenced by filing under leave of the court, in August, 1944, of the government's complaint against both defendants. Answer of the defendants was filed on January 24, 1945, and issues were joined by filing of a reply by the United States on the 6th day of March, 1945. Under order of the Court made and entered on the 25th day of April, 1945, a Special Master was appointed. Prior to the taking of any testimony the Special Master called for Memorandums as to the law to be urged by the various parties and in July the plaintiff complied by filing [fol. 575] a three page brief and thereafter the defendants filed a five page typewritten memorandum of authority. All parties being ready the evidence was taken at Cheyenne, Wyoming, beginning on the 10th day of September, 1945. The hearing was concluded on the early evening of September 12, 1945, the record of the proceedings consisting of 223 typewritten pages. The plaintiff was then allowed

sixty days to file an opening brief, the defendant sixty days from the time of the service of the government's brief to file an answering brief and the plaintiff fifteen days after the service of the answering brief to file a reply brief.

Pursuant thereto the plaintiff filed an opening brief consisting of fifty-five pages, which was received by the Special Master on November 7, 1945. On January 11, 1946, the Special Master received the answering brief of the defendants consisting of 95 pages. On January 28, 1946, the Special Master received the reply brief of the plaintiff consisting of fifty-five printed pages. It was agreed by and between all parties and the Special Master that in the event he desired an oral argument it would be set later. After, however, a complete study of the briefs and an analysis of the record of the proceedings had at Cheyenne it was determined by the Special Master that further oral argument would serve no useful purpose.

[fol. 576] Plan of Report

This report is in four parts:

1. The pleadings.
2. A discussion of facts and the applicable law.
3. Findings of Fact and Conclusions of Law.
4. Proposed decree.

The Pleadings

The Complaint in this case is extremely brief. It simply alleges that the plaintiff is the owner in fee simple of public lands in Park County, Wyoming, described as Section 36, Township 58 North, Range 100 West of the Sixth Principal Meridian, and that the State of Wyoming claims some right, title or interest in that land adverse to the United States. Paragraph V of the complaint alleges:

> "The defendant, The Ohio Oil Company, claims some right, title, or interest in said Section 36 under an oil and gas lease or leases granted to it by the State of Wyoming, and now is and for many years last past has been in the actual possession of said Section 36 actively engaged in the production of gas, oil and other petroleum products therefrom. The exact amount and value of gas, oil, and other petroleum products extracted by

the defendant, The Ohio Oil Company, is not known to the plaintiff, but it is informed and believes, and upon [fol. 577] such information and belief alleges, that the value of the oil and other products extracted by the defendant, The Ohio Oil Company, is in excess of $165,000.00."

A decree is asked:

1. Quieting title in the plaintiff to the land.

2. Requiring defendants to account for all oil, gas and other petroleum products extracted from the land by the defendants or either of them.

3. Adjudging that the plaintiff recover from the defendants the full value of all such extractions, with interest thereon.

The defendants answer jointly, denying that the plaintiff was the owner of the lands in question, admitting that the State of Wyoming claimed some right, title and interest in the land and alleging that it, the State of Wyoming, was the owner in fee simple of the land. The defendants further admitted paragraph V with the following proviso.

"but in this regard, defendants allege that the State of Wyoming and its lessee, The Ohio Oil Company, have at all times, in good faith, understood and believed, and still understand and believe, that the State of Wyoming is now, and for many years has been, the owner of said Section 36 and that the leases granted by the State of Wyoming to defendant, The Ohio Oil Company, were given and granted by the State of Wyoming and accepted and taken by defendant, The [fol. 578] Ohio Oil Company, under and with such good faith, understanding and belief, and any and all exploration and development work done by the defendant, The Ohio Oil Company, in or upon said land was done under said good faith, understanding and belief, and any oil or gas produced by the defendant, The Ohio Oil Company, from said lands was produced under said good faith, understanding and belief; that if the Court should find, adjudge and decree that the United States is now and always has been the owner of said Section 36, then and in that event the defend-

ants allege that on any accounting in respect to the value of the production of said oil or gas, credit should be given to the defendants for any and all proper expenditures made by defendant, The Ohio Oil Company, in the exploration and development of said lands for oil and gas purposes, and for all proper expenditures and costs of operation incurred in the production of said oil and gas; that the defendants further allege in this regard that the costs incurred by defendant, The Ohio Oil Company, in said exploration, development and producing operations has exceeded the value of any oil or gas produced from said lands."

As a separate defense the defendants allege that by virtue of the Organic Act, approved July 25, 1868, creating the Territory of Wyoming, Sections 16 and 36 of each township, were reserved for school purposes and that by virtue of the terms and provisions of the Act admitting the State of Wyoming to the Union, approved July 10, 1890, said Sections were granted to the State of Wyoming for the support of its public schools. The affirmative matter pleaded continues:

[fol. 579] "3—That on or about the 3rd day of March, 1892, the Commissioner of the General Land Office, through the United States Surveyor General for the State of Wyoming, informed the State of Wyoming that upon its formal application therefor, a survey of Townships 57 and 58 North, Ranges 97 to 102, inclusive, West of the Sixth Principal Meridian, would be made by the United States for the purpose of identifying the Sections numbered 16 and 36 that were located within the said area.

4—That on or about the 7th day of March, 1892, the State of Wyoming made and filed with the Surveyor General for the State of Wyoming a formal request for a survey by the United States of the townships above mentioned for the purpose of identifying the Sections 16 and 36 that were located or included in said townships.

5—That the request of the State of Wyoming for a survey of said townships for the purpose aforesaid

was submitted to the Commissioner of the General Land Office on or about the 11th day of April, 1892, and thereafter, and on or about the 28th day of April, 1892, a contract between the United States and one, Augustus L. Coleman, covering the making by said Coleman of a survey of said townships, was approved by the Commissioner of the General Land Office, and in special instructions which formed a part of said contract, the said Coleman was informed that said survey was being made at the request of the State of Wyoming for the purpose of identifying the Sections, 16 and 36 that were situated within the lands embraced in said contract and to be surveyed by said Coleman pursuant to the terms and provisions of said contract and the special instructions attached thereto and made a part thereof.

[fol. 580] 6—That on or about the 5th day of August, 1892, the Surveyor General for the State of Wyoming advised the Commissioner of the General Land Office that Coleman had completed the surveys covered by the above mentioned contract and that the same were ready for examination in the field; that thereafter, and on or about the 11th day of August, 1892, the Commissioner of the General Land Office instructed the United States Surveyor General for the State of Wyoming to make a personal inspection of said surveys in the field, and pursuant to said instructions, said Surveyor General made such inspection and prepared field notes thereof; that on or about the 26th day of November, 1892, the plats, transcripts, and field notes made and prepared by said Coleman in connection with his said surveys, and the transcripts and field notes made and prepared by said Surveyor General in connection with his examination in the field of the said Coleman surveys, were filed in the office of the said Commissioner of the General Land Office and submitted to him for his approval.

7—That on or about the 20th day of December, 1892, the Commissioner of the General Land Office, being fully advised, and acting within his authority, accepted and approved the said Coleman surveys.

8—That in respect to said Township 58 North, Range 100 West of the Sixth Principal Meridian, the said

Coleman did not subdivide said township, and did not survey and run the interior lines of Section 36 of said township, or mark the interior northwest corner of said Section 36, and the plats, transcripts, and field notes prepared by him and filed in the office of the Commissioner of the General Land Office, as aforesaid, so disclosed; that said Coleman did survey the exterior [fol. 581] lines of said township, and did survey the exterior lines of said Section 36, and said Coleman did mark the three exterior corners of said Section 36, and his plats, transcripts, and field notes filed with the Commissioner of the General Land Office, as aforesaid, so disclosed, and said survey of the exterior lines of said township and of said Section 36, with said marking of said exterior corners of said Section 36, together with the surveys of adjoining townships made by said Coleman under said contract, were sufficient to identify said Section 36.

9—That the United States now, and for the first time to the knowledge of defendants or either of them, contends that title to said Section 36 did not pass from the United States to the State of Wyoming upon the approval and acceptance of said Coleman surveys by the Commissioner of the General Land Office on the ground that Township 58 was not subdivided by said survey thereof and that the interior lines of Section 36 were not surveyed and run and that the interior northwest corner of said Section 36 was not marked.

10—That the plats, transcripts, and field notes covering the Coleman surveys that were filed in the office of the Commissioner of the General Land Office and submitted to him, as aforesaid, were sufficient to identify said Section 36, and the said Commissioner of the General Land Office had authority so to determine, and when said Commissioner of the General Land Office accepted and approved said Coleman surveys made for the purpose aforesaid, he determined, within his authority, that said Coleman surveys sufficiently identified said Section 36.

11—That if the Commissioner of the General Land Office had objected to the Coleman Survey of said Township 58 and of said Section 36 thereof on the

[fol. 582] ground that the interior lines of said Section 36 had not been surveyed and that the said Township 58 had not been subdivided or that the northwest corner of said Section 36 had not been marked, then and in that event the State of Wyoming would have requested, and would have obtained, a more detailed survey of said Township 58 and said Section 36 thereof, and such further, more detailed survey would, in any event, have been made and approved long prior to 1900, and the title to said Section 36, free from any objection thereto by reason of any alleged insufficiency of the survey, would have vested in the State of Wyoming; that the State of Wyoming, knowing that said survey was made at its request and for the express purpose of identifying any Sections 16 and 36 located within the area covered by said surveys and well knowing that the said Coleman surveys did identify said Section 36, was lulled into a sense of security by the approval of said surveys by the Commissioner of the General Land Office, and said State of Wyoming, relying upon the approval of said surveys by the Commissioner of the General Land Office as being sufficient to pass the title to said Section 36 from the United States to the State of Wyoming, did not inquire into the situation from the standpoint of the objections to said surveys now made by the United States, and did not request or insist upon a more detailed survey of said Township 58 and said Section 36 thereof; that by reason of the foregoing facts and circumstances, the plaintiff is now estopped in equity from asserting that the approval and acceptance by the Commissioner of the General Land Office of the said Coleman surveys did not pass title to said Section 36 from the United States to the State of Wyoming because of any alleged insufficiency or defect in said Coleman surveys."

[fol. 583] The defendants prayed for a decree dismissing the complaint of the plaintiff and adjudging the State of Wyoming to be the owner in fee simple of the land.

By reply the plaintiff denied that the Organic Act vested title in the State of Wyoming to any Sections 16 and 36, and also denied that the Act admitting the State of Wyoming to the Union vested title. Paragraph 3 above quoted was denied on information and belief. Paragraph 4 above

quoted was admitted with a slight change in phraseology. The same facts set out in paragraph 5 were pleaded by the plaintiff in a slightly different language. As to paragraph 6, it is virtually admitted with some minor changes in language. The same is true as to paragraphs 7 and 8. As affirmative the plaintiff pleaded that all but the southwest quarter of the southwest quarter of Section 36 was known to be mineral in character prior to December 20, 1892, and continued as follows:

> "II. That a survey of Section 36 of said Township 58 was authorized on July 14, 1914, and was accepted by the Commissioner of the General Land Office on July 27, 1916, and that the Coleman survey of the exterior lines of said township 58 did not constitute a survey of the Section 36 in said township.
>
> III. That on December 6, 1915, about seven months before the survey of section 36 in said Township 58 was accepted, the President, under authority of the Act of June 25, 1910, c. 421, 36 Stat. 847, withdrew from [fol. 584] location, settlement, sale, or entry all of Section 36 in said Township for classification and in aid of legislation and placed the section along with other lands in Petroleum Reserve No. 41."

Before any evidence was taken before the Special Master the plaintiff asked for leave to amend its complaint as follows: Amending paragraph V to allege the possession by The Ohio Oil Company of only the east half of the northeast quarter of said Section 36, and amending its reply by striking from paragraph I of the affirmative matter the words in the first line: "But the southwest quarter of the southwest quarter," and by striking all the remainder of said paragraph following the word "accepted." It also moved to amend its reply to counter-claim by adding to paragraph I the following words: "and alleges the defendant, The Ohio Oil Company, is in unlawful possession of the East Half of the Northeast Quarter of said Section 36."

The amendments were denied by the Special Master upon the theory that it was submitted to him on the issues of the pleadings as filed and he had no right, over objections of counsel, to permit any amendments. Inasmuch as coun-

sel did object the amendments were not permitted. However, counsel for the defendants stated:

> [fol. 585] "Mr. Ellery: We would like the record to show that we have no objection to the statement being considered as an application in the Supreme Court for leave to amend there instanter, as far as that is concerned."

Inasmuch as the amendments did not change the general issues before the court, the amendments should be allowed by the court and the complaint and reply be treated as amended to that extent.

A Discussion of Facts and the Applicable Law

It is necessary that this phase of this report be combined because in each instance the question to be decided is a mixed one of law and of fact. There being many of these questions I shall discuss each of them under a separate sub-head.

(a) Did the survey of 1892, referred to throughout as the "Coleman Survey" sufficiently identify Section 36 as to vest title in the State of Wyoming upon its approval?

The facts with reference to this survey are clear and are not disputed. On the 7th day of March, 1892,[1] the State of Wyoming, through its Board of Control, wrote to the United States Surveyor General at Cheyenne, Wyoming, in part as follows:

> [fol. 586] "The State Board of Control is charged with the duty of selecting the lands donated by the United States Government to the State of Wyoming, at the time of its admission. In order that these selections may be made without delay the Board requests that you cause to be surveyed and subdivided as speedily as possible, the following named townships, to-wit: * * *"

Townships 57 and 58 and ranges 89 to 109 inclusive were included. On April 11, 1892,[2] a contract was submitted for

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[1] Plaintiff's Exhibit 7-A.

[2] Plaintiff's Exhibit 7-B.

approval to the Commissioner of the General Land Office by the Surveyor General asking for the approval of a contract dated March 8, 1892,[2] with Augustus L. Coleman. The letter from the State Board of Control was enclosed with the contract. This contract was approved by the Commissioner of the General Land Office on the 28th day of April, 1892. This contract covered, among other things, the establishment of "the exterior and subdivisional lines of Township 57 north, ranges 97, 98, 99, 100, 102 and 102 west, and fractional township 58 north in the same ranges."

In the special instructions dated March 11th, Coleman is advised that the survey of the lands embraced in his contract has been requested by the State Board of Control for the purpose of identifying the lands donated by the State to the General Government and that he was, therefore, "to [fol. 587] subdivide in full every township containing lands valuable for any purpose and upon which you enter for subdivisional work."

That thereafter on the 5th day of August, 1892,[1] the Surveyor General advised the Commissioner at the General Land Office that Coleman had completed the survey under the contract. Whereupon, on August 11, 1892,[2] the Commissioner of the General Land Office authorized the United States Surveyor General for Wyoming to make a personal inspection of the surveys under the contract. On November 26, 1892,[3] the plats and transcript of field notes of the surveys of Mr. Coleman were forwarded to the Commissioner of the General Land Office. These field notes, as to Township 58 north, 100 west, show the establishment of the exterior boundaries and also the setting of corner and quarter corner monuments on the exterior boundaries. The field notes and the plats were submitted by the Surveyor General to the Commissioner of the General Land Office and were, on the 20th day of December, 1892,[4] accepted and approved by the Commissioner. The plat shows the establishment of the following parts of Section 36, the section with which we are interested: The southeast corner thereof,

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[2] Plaintiff's Exhibit 8-A.

[1] Plaintiff's Exhibit 9.

[2] Plaintiff's Exhibit 10.

[3] Plaintiff's Exhibits 12 and 13.

[4] Plaintiff's Exhibit 28.

the quarter section point to the north and the northeast [fol. 588] corner thereof. Westerly from the southeast corner there was established the quarter corner and the southwest corner. However, no interior lines were established. The defendants take the position squarely that this survey was sufficient in equity to identify or make susceptible of identification Section 36 and that upon its approval Section 36 was withdrawn and set apart from the public lands of the United States and was irrevocably appropriated to the Wyoming school grant.

Upon first glance it would seem that this contention is sound and should be accepted by this court as the basic fact from which to proceed. The difficulty arises, however, by reason of the fact that these points on the boundaries of Section 36 might or might not have remained as first surveyed under the laws and regulations in force at the time of the 1892 survey. We must accept the situation as of the time the survey was made and not tie it into the later survey. The law, Secs. 2395-2397, now codified as 43 U. S. C. Secs. 751-753, provide specifically:

> "Sec. 2395. The public lands shall be divided by north and south lines run according to the true meridian, and by others crossing them at right angles, so as to form townships of six miles square, unless where the line of an Indian reservation, or of tracts of land heretofore surveyed or patented, or the course of navigable rivers, may render this impracticable; and in that case this rule must be departed from no further than such particular circumstances required.
>
> [fol. 589] Second. The corners of the townships must be marked with progressive numbers from the beginning; each distance of a mile between such corners must be also distinctly marked with marks different from those of the corners.
>
> Third. The township shall be subdivided into sections, containing, as nearly as may be, six-hundred and forty acres each, by running through the same, each way, parallel lines at the end of every two miles; and by making a corner on each of such lines, at the end of every mile. The sections shall be numbered respectively, beginning with the number one in the northeast section and proceeding west and east alternately

through the township with progressive numbers till the thirty-six be completed."

It is to be noticed, therefore, that this survey did not comply with the third paragraph of this section and was not intended, therefore, to be a subdivisional survey of the township. The same regulations of the Department then in effect provided that upon starting a survey for the subdivision of a township if it was found that the exterior boundaries had been incorrectly run or marked or that the corners established thereon had been obliterated, the deputy should re-survey so much of such exterior boundary as might be necessary and establish new corners wherever necessary. This is found in the Manual dated January 1, 1890 on page 40 thereof.

That the corners of 36 as apparently established by the Coleman Survey did not specifically identify 36 is clearly established by the 1916 survey. It is not necessary to recite [fol. 590] the entire history of the 1916 survey as shown by the exhibits in this case but simply to point out that the contract provided that fractional Township 58 was to be subdivided. In the instructions to the surveyor the Surveyor General said "The condition of the boundaries of this township will influence the method of subdivision and should first be determined." He further stated that inasmuch as surveyed areas closed on the west three and one-half miles of the south boundary, that much of the boundary should be preserved but that the remaining two and one-half miles (which includes the south boundary of 36), if found defective, should be re-surveyed. The field notes of the so-called 1916 survey show a resurvey of a part of the south and east boundaries of Township 58 north and a retracement of the east and south boundaries of 58 north. These notes disclose that in the retracement of the north boundary of Township 57, which constitutes the south boundary of Township 58, there was a substantial variance. In a retracement of the east boundary of 58 we also find variances.

While it is true that these variances were within the prescribed limit then fixed for variances, of fifty links, yet, until the survey of 1916 was completed and accepted by the Commissioner of the General Land Office on July 27, 1916, it cannot be said that any boundary or corner of Section 36 was definitely established.

[fol. 591] This court has held that lands may be unsurveyed even though there has been a complete approved survey at an earlier period where the lines and marks of the original survey have become completely obliterated. *Cox vs. Hart*, 260 U. S. 427. That case also expressly holds:

> "A survey of public lands does not *ascertain* boundaries, it *creates* them."

To the same effect:

Sawyer vs. Gray, 205 Fed. 160;
Carroll vs. United States, 154 Fed. 425.

The supreme court of California and the Land Office has followed this rule of law consistently.

Bullock vs. Rouse, 81 Cal. 590;
Powers vs. Jackson, 50 Cal. 429;
Middleton vs. Low, 30 Cal. 596;
Robinson vs. Forrest, 29 Cal. 317;
Barnhurst vs. State of Utah, 30 L. D. 314;
Harris vs. State of Minnesota, 1 Copp L. L. 631.

(b) When, if at all, did title vest in the State?

The defendants make a very plausible and effective argument that under the Wyoming Organic Act and Wyoming Enabling Act, Sections 16 and 36 of each township were [fol. 592] withdrawn and set apart from the public lands of the United States and appropriated to the school land reservation.

Attention is first called to the Act of February 26, 1859, which provides in part:

> "Where settlements, with a view to preemption, have been made before the survey of the lands in the field, which are found to have been made on Sections 16 or 36, those sections shall be subject to the preemption claim of such settler; and if they, or either of them shall have been reserved or pledged for the use of schools or colleges in the state or territory in which the lands lie, other lands of like quantity are appropriated in lieu of such as may be patented by preemptors." (43 USCA P. 108)

This is followed by Section 14 of the Wyoming Territorial Organic Act which as introduced in Congress read:

> "And Be It Further Enacted, That when the lands in the said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, Sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.",

but which, during debate in the lower house was amended to read as follows:

> [fol. 593] "That Sections numbered sixteen and thirty-six in each township in said Territory shall be and the same are hereby, reserved for the purpose of being applied to public schools in the State or States hereafter to be erected out of the same."

It is to be noticed that this leaves out of the Act the provision:

> "That when the lands in said Territory shall be surveyed, under the direction of the Government of the United States, preparatory to the bringing the same into market."

Section 4 of the Wyoming Enabling Act provides in part:

> "That Sections numbered 16 and 36 in every township of said proposed state, are hereby granted to said state for the support of common schools."

Section 5 provides in part:

> "That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. and such land shall not be subject to preemption, homestead entry, or any

other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

The defendants seriously contend that this Act constitutes a contract between the United States and the State of Wyoming, and

[fol. 594] "Under this compact by a clear and specific provision thereof the United States granted to Wyoming, in praesenti, Sections 16 and 36 of every township in the State and further clearly and specifically contracted and agreed that the unsurveyed Sections 16 and 36 were appropriated to the grant and should not be subject to any type of entry under the land laws of the United States, but were reserved for school purposes only."

Were this question not foreclosed by a decision of this court in *United States vs. Morrison*, 240 U. S., 192, the arguments of the defendants would be unanswerable. It was so held by the Supreme Court of the State of Washington in *State vs. Whitney*, 66 Wash. 473. The Supreme Court of the State of Washington in that case found the grant in the State's Enabling Act, using precisely the same words as in the Wyoming Act, was a grant in praesenti saying:

"We therefore hold that the words of grant in our enabling act are words of present grant, and that when, by the adoption of its constitution, the state affirmed the provisions of the enabling act and such constitution was approved by the United States, and the State of Washington thereupon fully admitted into the Union, the grant defined in the enabling act took effect as of its date, and passed the entire title of the United States as fully and completely as though such Sections 16 and 36 had been previously surveyed, and were then capable of exact identification."

This decision of the Supreme Court was prior to the decision of this court in the Morrison case. While there [fol. 595] is some slight distinction in phraseology in various Organic Acts and various Enabling Acts it is obvious

from a reading of the opinion of this court in the Morrison case that the court read into the various statutes a congressional intention to treat the Western public land states precisely the same and followed the ruling in *Heydenfeldt vs. Daney Gold & Silver Mining Co.* 93 US 634 dealing with the Nevada grant.

The court said, at page 606:

> "But Congress used the same phrase substantially in nearly every one of the school grants, and it was the manifest intention to place the states on the same footing in this matter. The same clause, relating to the same subject, and enacted in pursuance of the same policy, did not have one meaning in one grant and a different meaning in another; it covered other dispositions, whether prior or subsequent, if made before the land had been appropriately identified by survey and title had passed. Nor is a distinction to be observed between mineral lands and other lands, if in fact Congress disposed of them. The validity of the disposition would not be affected by the character of the lands, although this might supply the motive for the action of Congress. We regard the decision in the Heydenfeldt Case as establishing a definite rule of construction."

And concluded at page 607:

> "We conclude that the State of Oregon did not take title to the land prior to the survey; and that until the sections were defined by survey and title had vested in the state, Congress was at liberty to dis-[fol. 596] pose of the land, its obligation in that event being properly to compensate the state for whatever deficiencies resulted."

This makes the question no longer an open one. If for no other reason we should under the rule of *stare decises* be compelled to follow that decision. The rule laid down in the Morrison case has become a rule of property throughout the Western land grant states. On the basis of that rule lieu land selections have been made and other valuable property rights have attached one way or the

other. If it laid down an incorrect rule of law it is much too late to correct it.[1]

It is to be noticed that under a situation precisely the same as the situation effecting the State of Wyoming the Supreme Court of the State of Washington, after the decision in the Morrison case, reversed its former opinion and held that the State's title did not vest until after the survey.

In the case of *Thompson vs. Savage,* 110 Wash. 486 the court says:

> "In the light of the decision of the federal Supreme Court in the Heydenfeldt Case, as interpreted in the [fol. 597] Morrison Case above quoted from, we cannot escape the conclusion that the decision of this court in *State vs. Whitney,* holding that our school land grant was in praesenti of unsurveyed as well as surveyed sections, completely vesting title in all of said sections at the time of the grant, must now be regarded as erroneous, and no longer controlling upon that federal question."

We agree with that statement.

It follows, therefore, that the State having acquired no title to the land prior to its reservation by the President on December 6, 1915, which was some seven months before approval the survey of Sections 36, the position of the United States as to title must be accepted and a decree entered quieting title in the United States to said sections.

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[1] In applying the rule of strict construction to school land grants it has always seemed to me that the court did not give consideration to the true relationship created between the Federal Government and the States by these enactments. In each case the grant created a charitable trust, with the Government the trustor, the State the trustee, and the future schools, and school children the beneficiaries. The rule of construction, therefore, should have been a liberal one favoring the trustee and the beneficiaries and where the meaning was debatable that construction which increased rather than diminished the corpus should have been adopted.

Accounting

In dealing with the accounting feature of this case, of course, one of the first things is to determine the measure of damages. The government having established its title to the property that alone "means that the company has been a trespasser in possession of government property during its entire period of operations." From the argument that follows that statement on page 34 of the government's opening brief it is apparent that it is the contention of the plaintiff that having [fol. 598] established ownership of the land in the plaintiff there is a presumption of fact that the trespass was willful.

In the hearing of this case the Special Master took the position that not only was there no burden placed upon the state and its Lessee to prove good faith but that the plaintiff by its pleadings had negatived any bad faith. Before the question arose the Special Master stated: (page 67 of the transcript.)

> "In the consideration of any transaction between parties such as this lease between the State of Wyoming and the defendant, The Ohio Oil Company, there is always a presumption of good faith, and I believe it is my duty to indulge in that. Even if the pleadings on the part of the defendants in this case were utterly silent on that point that they entered into this lease in good faith, my present thought is that it would be my duty to indulge in the presumption that they did act in good faith under a claim of title.
>
> "The Government has also pleaded in its complaint that The Ohio Oil Company was in possession as a lessee under the State of Wyoming and under a claim of title. If the Government had intended to charge willful and malicious trespass or bad faith, it seems to me that it was the duty of the Government to so charge, and in the absence of any affirmative charge of bad faith, the Special Master is of the present opinion that he will not hear testimony as to that; that he will not hear testimony that goes to the question of bad faith, because I do not believe bad faith has been properly pleaded."

[fol. 599] Nothing that happened thereafter caused him to change his opinion. This is largely based upon paragraphs IV and V of the complaint herein, which read:

> "IV. The State of Wyoming claims some right, title or interest in said land adverse to the United States.
>
> "V. The defendant, The Ohio Oil Company, claims some right, title, or interest in said section 36 under an oil and gas lease or leases granted to it by the State of Wyoming, and now is and for many years last past has been in the actual possession of said Section 36 actively engaged in the production of gas, oil, and other petroleum products therefrom. The exact amount and value of gas, oil, and other peteroleum products extracted by the defendant, The Ohio Oil Company, is not known to the plaintiff, but it is informed and believes, and upon such information and belief alleges, that the value of the oil and other products extracted by the defendant, The Ohio Oil Company, is in excess of $165,000.00."

The evidence and the only evidence that was offered to prove bad faith or a malicious and willful trespass were letters and other documents and identifications from 49 to 91 inclusive. When asked the plaintiff's purpose in offering these documents Mr. Sonosky answered: (page 215 of transcript.)

> "These exhibits are for the purpose of establishing that the defendants were willful trespassers on the land in controversy for all or a part of the time in controversy, and they had full knowledge of the title and ownership of the United States."

[fol. 600] Again when he was asked how the prof-erred exhibits would tend to prove that The Ohio Oil Company or the State of Wyoming was a willful trespasser, he simply answered, "knowledge."

However, even though all of these documents were in evidence and considered, the mere fact that they would show that for a great many years the defendants had knowledge of the fact that the United States was claiming title to the lands in question, would not change my opinion

that the trespass here was an innocent one under claim of right so as to entitle the defendants to an off-set.

This is based very largely upon the language used by this Court in *Gulf Refining Co. vs. United States*, 260 U. S. 125. In that case this Court held that trespasser could continue in possession of lands originally taken in good faith even after a judgment against him and not be charged with willful trespass. Here we have a situation where the defendant State at all times in perfect good faith asserted title to the land in question and believed that it had title.

The Ohio Oil Company was placed in possession by the State under the same belief and remained in undisturbed possession until the institution of this suit. How, then, is it to be said that there was such a malicious trespass as to entitle the plaintiff to recover the full value of the oil extracted without deduction of any kind?

[fol. 601] It is not necessary to discuss in too much detail the proper measure of damages to apply in this case, nor, to decide what the rule of damages is under the laws of the State of Wyoming, although unquestionably this is the equitable rule rather than the strict common rule contended for by the plaintiff.

Martel vs. Hall Oil Co., 36 Wyoming, 166.

We are dealing with an action between two sovereigns, the United States of America and the State of Wyoming. The situation is precisely the same as an action between two states and must be treated in the same manner. In the case of the *Commonwealth of Virginia vs. State of West Virginia*, 220 U. S. 1, the Court speaking through Mr. Justice Holmes said:

> "The case is to be considered in the untechnical spirit proper for dealing with a quasi international controversy, * * *."

The rule of damages applied, therefore, is one that appeals to the conscience of the Court and that rule is the one that was applied by the court in *United States vs. Standard Oil Company of California*, 21 Fed. Supp. 645, 107 Fed. 2d 462. *Mason vs. United States*, 260 U. S. 545.

The defendants therefore should be and will be permitted to have allowed as credits and deducted from the value of oil extracted and other earnings, all proper expense of exploration, development and operation.

[fol. 602] Receipts

There is no dispute as to the amount of receipts of the operations of The Ohio Oil Company of the land in question. The grand total of receipts amounted to $151,011.23, plus $17,306.30 in royalties paid to the State of Wyoming, making a total to December 31, 1944 of $168,317.53.

Disbursements

Total expenditures of The Ohio Oil Company shown by the accounting were in the amount of $215,490.97, plus the royalty payment of $17,306.30. These expenditures are broken down as follows:

Capital	$118,628.84
Operating Expense	70,083.73
Taxes	4,317.40
Overhead	22,461.00
Royalty paid	17,306.30
Total	$232,797.27

The capital expenditures are broken down as follows:

Total cost of Well No. 1	$ 16,904.22
2	24,457.40
3	25,738.67
4	29,835.54
5	48.50
Water Well No. 1	850.24
2	2,581.55
3	2,765.78
Lease Equipment	15,446.94
Total Capital Expenditures	$118,628.84

[fol. 603] Objections to Specific Items

Specific objection, in addition to the general objection to allowance of any expenditures, was made by the plaintiff to the cost of the five oil wells, three water wells and lease equipment, on the grounds that those items represent permanent improvements on the lands placed thereon by The Ohio Oil Company for its own benefit and without the consent of the plaintiff.

A further specific objection of expenditure was made for the allowance of Wells Nos. 4 and 5 on the ground that they did not constitute an improvement to the land and did not contribute to the production of oil.

Specific objection was made to the allowance of taxes on the ground that if the United States itself had extracted the oil it would not have been required to pay taxes.

Specific objection was made to the item of over-head on the grounds that the item had never been charged on the books of the company directly against its operations, but is simply an arbitrary allocation of a portion of administrative and general expenses: (page 201 of transcript.)

> "* * * including such items as salaries and expenses of officers, superintendents and clerks, the cost of office supplies, insurance, pensions, legal services, telephones, and so forth, depreciation of company [fol. 604] office buildings and office equipment in Findlay, Ohio, and Casper, Wyoming, and other miscellaneous items in connection with its general office in Findlay and its division office for the entire State of Wyoming.
>
> "The Government further objects to the over-head, on the ground that those charges represent fixed expenses which the Company would have incurred even if it had never trespassed on Section 36.
>
> "The Government further objects on the ground that even if the Ohio is an innocent purchaser, it is not entitled to deduct a single penny not spent directly on Section 36 in the extraction of oil from that section."

The plaintiff also objected to allowance of any royalties amounting to $17,306.30 paid to the State of Wyoming.

The plaintiff was given an opportunity to offer evidence in support of its objection but no evidence was offered.

(a). As to the objection to the allowance of the capital expenditures and for non-producing Wells No. 4 and 5, the government bases its position upon language used in *United States vs. Midwest Northern Oil Company* 232 Fed. 619. In that case the court said at page 633:

> "The value of the oil taken is to be ascertained by its market value at the time it was used or disposed of

[fol. 605] by the defendants, less the cost of extracting and marketing the same, excluding from such costs the work of sinking wells, development or improvement, or in discovering or reaching the oil."

This language standing alone would justify the government's contention. However, in the same paragraph the court further stated:

> "They should be allowed, however, to set off against the damages properly chargeable to them the value of any permanent and useful improvements to the property made by them, such as producing wells, permanent buildings, and the like * * *."

Reading these two quotations together, it is obvious that the court had in mind that there could be no recovery against the owner for the value of improvements made, if the value or cost of such improvements exceeded the return.

In this case the defendant, The Ohio Oil Company, is asking the expenditures as an off-set and asks no recovery over and above the value of the oil recovered.

There was no evidence offered to show that any of these expenditures were made improvidently. The court necessarily knows that in the exploration and development of an oil field well, dry holes will be drilled, and in many cases other large expenditures will be made upon which no return [fol. 606] will be had. Oil, like gold, is where you find it and in the absence of any evidence tending to show that these expenditures in the drilling of the oil wells, the water wells and the non-producing Wells 4 and 5, were not necessarily made in the exploration and development work, these expenditures should and will be allowed.

In this case we are faced with a situation, because of the delay of the government in bringing its action, which should appeal much more strongly to the conscience of the court than the situation with which Judge Yankwich dealt in the case of *United States vs. Standard Oil Company of California*, 21 Fed. Supp. 645, affirmed by the Circuit Court of Appeals of the Ninth Circuit, 107 Fed. 2nd, 402, and we can adopt his language where he said:

> "And our disagreement with the government, as to some of the items, is not so much a disagreement as to the law, but a disagreement as to the fair and equitable

method to be used in balancing the equities as between the sovereign reclaiming a part of the public domain and an invader who, in good faith, in the solemn belief of the validity of his claim of title to a portion of the public domain, has spent its substance in developing it and protecting it, only to have the government, after delay, admittedly inexcusable, on the part of its officers, reclaim its own."

The Ohio Oil Company in this case took possession of this property early in 1917 and its first Well was started [fol. 607] apparently in February of that Year. From practically without abatement from then on until the end of the accounting period. Its possession was open and notorious and must necessarily have been known to the plaintiff, yet, nothing was done by the government to assert its claim to the land until August of 1944. In later years the return from the field increased and the Company is now approaching the period when it could expect to get not only the return of the expenditures it would appear that work continued its capital investment but a profit from its operations. It would be wholly inequitable to permit the government to reap the profit from this work without allowance to that defendant.

(b). As to the objection to the taxes, both personal and yield taxes, paid on the personal property and to the state, there should be allowance. While it is true that if there had been a direct operation of this field by the government no taxes could have been collected, however, it is not so clear that had the government operated through a Lessee, as it ordinarily does, that taxes could not have been collected from the Lessee.

Wilson vs. Cook, 66 Sup. Ct. 633, 90 Law Ed. Adv. 609.

(c). Also the objection as to over-head was not well taken. Whether we accept the statement of the government or the statement of the company as to just how this amount was [fol. 608] arrived at, yet, there is nothing before the court from which it could be held that the method pursued was not within good bookkeeping practices, nor, does it appear to be exorbitant. At any rate no evidence was offered in support of this objection and we cannot, from the state of the record,

say that it was not a proper charge. Here again we are impressed with a statement of Judge Yankwich that:

> "In the case of a corporation operating on a large scale, it is considered legitimate accounting practice to allocate general over-head expenses to particular operations upon a percentage basis. In our era of highly developed industrial organizations, management is a legitimate part of operations. See *Lytle, Campbell & Co. vs. Somers, Fitler & Todd Co.*, 1923, 276 Pa. 409, 413, 120 A. 409, 27 A. L. R. 41; 46 C. J. 1162. It is so considered in computing costs. See *Ft. Dearborn Trust & Savings Bank vs. Skelley Oil Co.*, 1930, 146 Okl. 179, 293 P. 557; *New Domain Oil & Gas Co. vs. McKinney*, 1920, 188 Ky. 183, 221 S. W. 245."

(d). The government's objection to allowance of the royalties paid to the State of Wyoming is sound and that expenditure should be disallowed *Mason vs. United States*, 260 U. S. 545.

However, eliminating that amount from the expenditures claimed by The Ohio Oil Company the amount received from the oil production falls far short of expenditures that have been allowed. Hence, no recovery for the amount should be had at this time.

[fol. 609] The accounting in this case runs only to December 31, 1944. Necessarily there must be an additional accounting for the period of 1945 and the ensuing period until the judgment is final in this case.

Inasmuch as the present deficit in operations amounts to $47,173.44, without royalties included, even though the royalties paid be disallowed as an expenditure, it is hardly possible that this deficit will have been wiped out and a credit established by that accounting. However, in the event that it is, the plaintiff should have judgment against the company for such amount, such judgment to be joint and several against both defendants for an amount not to exceed the royalties paid by the defendant company to the defendant state. It should not be necessary to re-refer this matter for an accounting, but the parties should agree upon the figures and submit them to the court.

As to the costs in this case, they should be equally divided between the three parties, namely, one-third to plaintiff, and one-third to each of the defendants. This being an equitable case, and as pointed out above, being considered

in an untechnical spirit, it would seem that the plaintiff, while being the prevailing party upon the major issue of title, yet, it is not wholly without fault in permitting this [fol. 610] matter to go over for so long a period of time. It does not, therefore, seem just or equitable to impose all costs on the defendants and one-third seems to be a proper amount to assess against it. In dividing the other two-thirds equally between the two defendants consideration has been given to the fact that while The Ohio Oil Company has probably sustained a large loss, the State has not been out of pocket in the matter.

It is, therefore, the recommendation that the court make the following

Findings of Facts

1

The jurisdiction of this court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States.

2

The Ohio Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal place of business at Findlay, Ohio.

3

At all times herein material the plaintiff was and now is the owner in fee simple of public lands in Park County, Wyoming, described as Section 36, Township 57 North of [fol. 611] Range 100 west of the Sixth Principal Meridian.

4

That on or about the 3rd day of March, 1892, the Commissioner of the General Land Office, through the United States Surveyor General for the State of Wyoming, informed the State of Wyoming that upon its formal application therefor, a survey of Townships 57 and 58 North, Ranges 97 to 102, inclusive, West of the Sixth Principal Meridian, would be made by the United States for the purpose of identifying the Sections numbered 16 and 36 that were located within the said area.

5

That on or about the 7th day of March, 1892, the State of Wyoming made and filed with the Surveyor General for the State of Wyoming a formal request for a survey by the United States of the townships above mentioned for the purpose of identifying the Sections 16 and 36 were located or included in said townships.

6

That the request of the State of Wyoming for a survey of said townships for the purpose aforesaid was submitted to the Commissioner of the General Land Office on or about [fol. 612] the 11th day of April, 1892, and thereafter, and on or about the 28th day of April, 1892, a contract between the United States and one, Augustus L. Coleman, covering the making by said Coleman of a survey of said townships, was approved by the Commissioner of the General Land Office, and in special instructions which formed a part of said contract, the said Coleman was informed that said survey was being made at the request of the State of Wyoming for the purpose of identifying the Sections 16 and 36 that were situated within the lands embraced in said contract and to be surveyed by said Coleman pursuant to the terms and provisions of said contract and the special instructions attached thereto and made a part thereof.

7

That on or about the 5th day of August, 1892, the Surveyor General for the State of Wyoming advised the Commissioner of the General Land Office that Coleman had completed the surveys covered by the above mentioned contract and that the same were ready for examination in the field; that thereafter, and on or about the 11th day of August, 1892, the Commissioner of the General Land Office instructed the United States Surveyor General for the State of Wyoming to make a personal inspection of said surveys [fol. 613] in the field, and pursuant to said instructions, said Surveyor General made such inspection and prepared field notes thereof; that on or about the 26th day of November, 1892, the plats, transcripts, and field notes made and prepared by said Coleman in connection with his said surveys, and the transcripts and field notes made and prepared by said Surveyor General in connection with his examina-

tion in the field of the said Coleman surveys, were filed in the office of the said Commissioner of the General Land Office and submitted to him for his approval.

8

That on or about the 20th day of December, 1892, the Commissioner of the General Land Office, being fully advised, and acting within his authority, accepted and approved the said Coleman surveys.

9

That said Coleman survey did not subdivide said Township 58 but did survey the exterior lines of said Township 58 and did mark the exterior corners of Section 36 in said Township 58, but that no survey was made at that time which subdivided said township into sub-sections, nor did the survey so identify or establish said section as to identify or make susceptible of identification Section 36.

[fol. 614] 10

That the State of Wyoming in good faith treated said survey as a complete survey of Township 58 and that it carried out the purposes for which said survey was requested, namely, identification of Section 36, and the State, also in good faith, since said time claimed title to said section and in 1917 placed the defendant, The Ohio Oil Company, in possession of said section under a lease from the State of Wyoming.

11

That a survey of Section 36 of said Township 58 was authorized on July 14, 1914 and was accepted by the Commissioner of the General Land Office on July 27, 1916.

12

That on December 6, 1915 about seven months before the survey of Section 36 in said Township 58 was accepted, the President, under authority of the Act of June 25, 1910, c. 421, 36 Stat. 847, withdrew from location, settlement, sale, or entry all of Section 36 in said township for classification and in aid of legislation and placed the section along with other lands in Petroleum Reserve No. 41.

13

That the defendant, The Ohio Oil Company, has received as gross proceeds from the operations of its Wells on said [fol. 615] property the total sum of $168,317.53 until December 31, 1944, and has made total expenditures in the amount of $232,797.27, of which amount $17,306.30 was paid as royalties to the State of Wyoming.

From which said Findings of Fact, the Special Master makes the following

Conclusions of Law

1

That the plaintiff is entitled to a decree quieting title in it to said Section 36, and adjudging that the defendant have no right, title or interest in and to said land or any part thereof, and perpetually enjoining the defendants from asserting any right, title or interest in and to said land or any part thereof.

2

That an additional accounting should be had covering the period from January 1, 1945, to the date of the decree and judgment entered accordingly, the plaintiff to take nothing by way of a money judgment unless the operations for that period of time discloses the value of oil extracted in excess of the costs of operations, plus a deficit in operations now existing.

[fol. 616] Proposed Decree

It is recommended that the following decree be entered:

It is ordered, adjudged and decreed, that title to Section 36, Township 58 North, Range 100 West of the Sixth Principal Meridian, lying in the State of Wyoming, be and the same is hereby quieted in the United States of America, and it is further

Ordered, adjudged and decreed, that the defendants, and neither of them, have any right, title or interest in and to said land or any part thereof, and it is further

Ordered, adjudged and decreed, that the defendants, and each of them, are hereby perpetually enjoined from asserting any right, title or interest in and to said land, or any part thereof, and it is further

Ordered, adjudged and decreed, that the defendants surrender possession of said land to the plaintiff, United States of America on or before sixty (60) days after the entry of this judgment, and it is further

Ordered, adjudged and decreed, that the parties hereto jointly file a statement with the court at the expiration of said sixty (60) day period, or earlier if said surrender is [fol. 617] made earlier, showing all the receipts from said property subsequent to the 1st day of January, 1945, and all proper expenses of operations for said period, and in the event said receipts exceed said expenditures by an amount in excess of $47,173.44, that the plaintiff have judgment against the defendant, The Ohio Oil Company, in the amount of said excess, such judgment to be joint and several against both defendants in an amount not to exceed the entire royalties paid to the defendant State of Wyoming by the defendant, The Ohio Oil Company, and it is further

Ordered, adjudged and decreed, that none of said parties shall have and recover the costs expended by it herein, and that the additional costs incurred in this court in the trial of this cause shall be divided equally between the parties hereto.

Respectfully submitted, Nat. U. Brown, Special Master.

[fol. 618] [File endorsement omitted.]

[fol. 619] IN THE SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1946

No. 10, Original

UNITED STATES OF AMERICA, Plaintiff,

v.

STATE OF WYOMING AND THE OHIO OIL COMPANY

EXCEPTIONS AND OBJECTIONS OF THE UNITED STATES TO THE REPORT AND RECOMMENDATIONS OF THE SPECIAL MASTER— Filed November 29, 1946

The United States excepts and objects to the Special Master's report and recommended findings of fact, conclusions of law and decree in the particulars hereinafter set

forth. Before specifying the Government's exceptions and objections a preliminary discussion may be helpful. The case splits into two main issues: the title question—whether the United States is the owner of the Section 36 in controversy; the accounting question—whether the United States is entitled to recover the value of the oil extracted by the defendants from Section 36 and, if so, the measure of damages to be applied. The Special Master held in favor of the United States on the title issue and in favor of the defendants on the accounting issue. He made [fol. 620] 13 findings of fact. Findings 1 and 2 concern the jurisdiction of the Court and the corporate existence of The Ohio Oil Company, and as to these there is no objection. Findings 3-9, inclusive, 11 and 12 relate to the title issue; findings 10 and 13 to the accounting issue.

The Findings Relating to the Title Issue

The Special Master found that, at all times material, the United States was and now is the owner in fee of the land in controversy (Finding 3). This finding is fully supported by the law and evidence and, accordingly, is dispositive of the title issue. However, in addition, the Special Master made eight findings of probative facts apparently intended to lead to the ultimate fact of ownership in the United States as set out in Finding 3 (Findings 4-9, 11, 12). The plaintiff considers some of these findings of probative facts to be erroneous or inaccurate in whole or in part. These errors do not affect the finding of the ultimate fact of ownership. For that reason there would seem to be no need formally to except to the findings of probative facts relating to the title issue. Nevertheless, in the interest of obtaining correct findings, the Court's attention is respectfully directed to what the Government considers to be errors and inaccuracies in those findings.

Finding 4.—This entire finding is objectionable on the ground that it is clearly erroneous since there is no evidence to support it.

Finding 5.—So much of this finding as follows the phrase "above mentioned" is objectionable on the ground that it [fol. 621] is clearly erroneous since there is no evidence to support it.

Finding 6: Objection 1.—This entire finding is objectionable on the grounds that it is inconsistent with Wyoming's clear admission in open court of the facts as pleaded by the

United States in Paragraph V, pp. 2-3 of its reply, and is contrary to the unequivocal declaration of the Special Master in open court that he would find the facts as admitted by Wyoming. So much of this finding as purports to show that the purpose of Wyoming's request for a survey was to identify Sections 16 and 36 is objectionable on the additional ground that there is no evidence to support it.

Objection 2.—The United States further objects to the failure of the Special Master to find the facts in the language set forth in Paragraph V, pp. 2-3, of the Government's reply on the grounds that Wyoming in open court admitted the allegations of Paragraph V, pp. 2-3 of the reply and the Special Master pronounced in open court that he would find the facts as admitted.

Finding 7: Objection 1.—The entire finding is objectionable on the grounds that (a) it is inconsistent with Wyoming's clear admission in open court of the facts as pleaded by the United States in Paragraph VI, pp. 3-4, of its reply; (b) it is contrary to the unequivocal declaration of the Special Master in open court that he would find the facts as admitted by Wyoming; (c) it is in opposition to the action [fol. 622] of the Special Master in refusing to permit the Government to make proof of the allegations of the reply so admitted by Wyoming; and (d) it reflects an incomplete and inaccurate picture of the facts established by the evidence.

Objection 2.—The United States further objects to the failure of the Special Master to find the facts in the language set forth in Paragraph VI, pp. 3-4, of the Government's reply on the grounds that (a) Wyoming in open court admitted the allegations of Paragraph VI, pp. 3-4 of the reply, (b) the Special Master pronounced in open court that he would find the facts as admitted, and (c) the Special Master refused to permit the Government to make proof of the allegations of Paragraph VI, pp. 3-4 of the reply.

Objection 3.—The United States further objects to the refusal of the Special Master to admit into evidence each of the following exhibits, marked for identification and offered in evidence by the plaintiff: Exs. 10, 11, 14, 16, 17, 20-23, 25, and 26. The ground for this objection is that the exhibits were refused admission into evidence solely for the reason that their contents stood uncontroverted by Wyoming's admission of the facts as pleaded by the United States in Para-

graph VI, pp. 3-4, of its reply. The Special Master announced he would find the facts as admitted by Wyoming and therefore no need existed for the United States to make [fol. 623] proof of the admitted allegations. Since the Special Master did not abide by his declaration in open court to find the facts as admitted by Wyoming, he erred in refusing to admit into evidence the exhibits above specified.

Finding 8.—No exceptions or objections.

Finding 9.—The portion of this finding reading "and did mark the exterior corners of Section 36 in said Township 58, but that no survey was made at that time which subdivided said township into sub-sections" is objected to as ambiguous, redundant and confusing, and not supported by the evidence.

Finding 10.—The exceptions and objections are noted *infra*, p. 10 in connection with the accounting issue.

Finding 11.—The portion of this finding reciting "a survey of Section 36" is objectionable on the ground that it is clearly erroneous since there is no evidence to support it. To conform to the evidence the finding should be modified to read as follows:

> That a survey subdividing said Township 58 into sections, including Section 36, was authorized on July 14, 1914, and was accepted by the Commissioner of the General Land Office on July 27, 1916.

Finding 12.—In so far as this finding refers to a "survey of Section 36" or to the withdrawal of "Section 36" it is objectionable on the ground that it is clearly erroneous [fol. 624] since there is no evidence to support it. To conform to the evidence the finding should be modified to read as follows:

> That on December 6, 1915, about seven months before the acceptance of the survey subdividing said Township 58 into sections, including Section 36, the President, under authority of the Act of June 25, 1910, c. 421, 36 Stat. 847, withdrew from location, settlement, sale, or entry, all of the future Section 36 in said township for classification and in aid of legislation and placed the future section along with other lands in Petroleum Reserve No. 41.

The Findings Relating to the Accounting Issue (Findings 10 and 13)

Finding 10.—The United States excepts and objects to this entire finding on the ground that it is clearly erroneous, since there is no evidence to support it.

Finding 13.—The United States excepts and objects to this finding as follows:

(a) to the failure to find that The Ohio Oil Company's gross proceeds of $168,317.53 consisted of $167,049.54 representing the value of the oil produced and $1,267.99 representing "steam earnings";

(b) to the failure to find by months the amounts and values of the oil produced by The Ohio Oil Company from Section 36 from the beginning of production in November 1917 through December 1944;

[fol. 625] (c) to the failure to find the facts showing and defining the separate classes of disbursements making up the total expenditures of $232,797.27, including the breakdown of capital expenditures;

(d) to the failure to find over what period of time the total expenditures were made;

(e) to the failure to find by years the amounts of royalties paid by The Ohio Oil Company to the State of Wyoming from the beginning of production in November 1917 through December 1944, and

(f) to the failure to find that wells No-. 4 and 5 were "dry holes" and non-productive.

The primary ground for these exceptions and objections stem- from the Special Master's failure to make findings on all essential facts concerning the accounting issue. The Special Master is free, of course, to recommend particular conclusions of law, but the Government believes it was error for him to make findings limited to those facts supporting the conclusions he recommended. The findings should cover all facts necessary to permit the plaintiff to present and the Court to consider all aspects of the law governing the measure of damages.

For example, one of the questions to be presented for the determination of the Court concerns the extent of The Ohio Oil Company's liability for the value of the production from

Section 36. The Government is free to contend that as a matter of law it is entitled to a judgment for the full value [fol. 626] of the oil extracted by the Company without deductions of any kind. In addition, the Government is entitled to contend on the facts that if any deductions are allowed, the Company may deduct only direct operating expenses ($70,083.73) but not capital expenditures ($118,628.84), taxes ($4,317.40), or overhead ($22,461). As to capital expenditures it is entitled to argue that even if some of these expenditures are deductible the cost of "dry holes" is not deductible. As presently framed, the findings of fact do not provide a basis for argument by the Government or conclusion by the Court that some kinds of expenditures are deductible but not others since (a) those findings do not show or define the several classes of expenditures and the amount of expenditures in each class, (b) they do not show wells Nos. 4 and 5 were "dry holes", and (c) although the findings presently show that the total receipts were for the period up to December 31, 1944 they are silent as to the period covered by the expenditures.

Again, the Government has demanded the value of production with interest. The record contains the facts permitting the computation of interest from the dates of conversion figured on a monthly basis (Def. Ex. A, pp. 30-38). The record also contains the facts showing by years the amounts of royalties paid by The Ohio Oil Company to the State of Wyoming (Def. Ex. A, p. 29). Should the Court [fol. 627] conclude that the Government is entitled to interest on the gross production or on the royalties alone, there is nothing in the Special Master's findings to permit computation of the amount of interest.

It is submitted that the findings should cover all essential facts so that contentions based on facts may be presented and considered and so that if the Court should adopt a measure of damages different than that recommended by the Special Master there would be findings on which to found the Court's conclusions of law. There is no conflict in the evidence as to values, or as to the dates or amounts of production, receipts or expenditures. They are correctly set forth in defendants' Exhibit A. In order that all essential facts may be contained in the findings, the following is proposed in lieu of the Special Master's Finding 13:

> That the defendant, The Ohio Oil Company, has received as gross proceeds from the beginning of pro-

duction in November 1917 through December 1944 from its operations on Section 36 the sum of $168,317.53, of which $167,049.54 represents the value of the oil produced and $1,267.99 represents "steam earnings." The amounts and values of the oil so produced by The Ohio Oil Company are set up by months in the defendants' Exhibit A, pp. 30-38, inclusive, and those pages are incorporated herein and made a part of this finding.

During the period beginning November 1917 through [fol. 628] December 1944, The Ohio Oil Company has made total expenditures in the amount of $232,797.27. These expenditures are broken down as follows:

Capital	$118,628.84
Operating Expense	70,083.73
Taxes (State only)	4,317.40
Overhead	22,461.00
Royalty paid	17,306.30
	232,797.27

The capital expenditures are broken down as follows:

Total cost of Well No. 1	$16,904.22
2	24,457.40
3	25,738.67
4	29,835.54
5	48.50
Water Well No. 1	850.24
2	2,581.55
3	2,765.78
Lease Equipment	15,446.94
Total capital expenditures	118,628.84

Capital expenditures represent the total cost to The Ohio Oil Company of five oil wells, three water wells and operating lease equipment. Two of the oil wells (Wells Nos. 4 and 5) were "dry holes" and non-productive.

Operating expenses represent the costs incurred by The Ohio Oil Company in its direct field operations on Section 36 for oil and gas purposes.

The expenditure for taxes includes only personal property ($1,522.89) and production taxes ($2,794.51)

paid in connection with its oil and gas operations on Section 36 by The Ohio Oil Company to the State of Wyoming or its political subdivisions.

Overhead expenditures represent the portion of the fixed administrative and general expenses of The Ohio [fol. 629] Oil Company charged and allocated by the Company against Section 36. This charge includes a portion of the general and administrative costs of the Company's general office in Findlay, Ohio and a portion of the general and administrative costs of the Company's division office maintained in Casper, Wyoming for the entire State of Wyoming. The overhead charge includes salaries and expenses of officers and personnel, office supplies, insurance and pensions, depreciation of company-owned office buildings and office equipment in Findlay and Casper, legal services and expenses, telephone, damages and miscellaneous items. The overhead charged against Section 36 has no relation to the services furnished Section 36 direct. It is arbitrarily prorated against Section 36 on the relation the sum of the Company's capital and operating expenditures on Section 36 bear to the same expenditures in the Company's Casper division (State of Wyoming). Included in the division's expenditures is the division's pro rata share of the Company's general office overhead in Findlay, Ohio.

Royalty paid represents the sum paid by The Ohio Oil Company and received by the State of Wyoming as royalties. The amounts of royalties paid by The Ohio Oil Company to the State of Wyoming are set out by years in defendants' Exhibit A, p. 29, which page is incorporated herein and made a part of this finding.

[fol. 630] Other Exceptions and Objections Relating to the Accounting Issue

1. The United States excepts and objects to the failure of the Special Master to find that each of the defendants has been a wilful trespasser ever since the beginning of operations on Section 36.

2. The United States excepts and objects to the failure of the Special Master to find that each of the defendants has been a wilful trespasser since about October 12, 1929. (Consideration of such a finding would be necessary only

if the Court should conclude the defendants were not wilful trespassers prior to October 12, 1929.)

3. The United States excepts and objects to the action of the Special Master in refusing to admit into evidence each of the following exhibits marked for identification and offered in evidence by the plaintiff: Exs. 49-53; 55-65; 67-70; 72-91.

The ground for the exception and objection is that the Special Master erred in ruling as a matter of law that the issue of whether the trespass was wilful was not in the case and that, therefore, the proffered exhibits were inadmissible.

Exceptions and Objections to the Conclusions of Law

Conclusion No. 1.—No objection or exception. (The word "defendant" on the third line should be plural.)

[fol. 631] *Conclusion No. 2.*—The United States excepts and objects to this conclusion on the following grounds:

(a) it is not supported by the findings of fact;

(b) it is contrary to the law insofar as it denies the United States a judgment for money for the value of all oil produced by The Ohio Oil Company up to January 1, 1945 with interest from the respective dates of conversion computed on a monthly basis and for the amounts of "steam earnings" received by The Ohio Oil Company during the same period;

(c) it is contrary to law insofar as it denies the United States a joint and several judgment against the defendants for the amounts of royalties paid by The Ohio Oil Company to the State of Wyoming together with interest computed by years from the dates of payments;

(d) it is contrary to law insofar as it denies the United States a judgment for money for the period from January 1, 1945 to the date of the decree, unless an additional accounting for that period "discloses the value of oil extracted in excess of the costs of operation, plus the deficit in operations now existing";

(e) the whole of the last quoted portion of the conclusion in item (d), immediately above, is ambiguous in meaning

and is not supported by any finding of fact showing "the deficit in operations now existing";

[fol. 632] (f) for the purpose of accounting for the period beginning January 1, 1945, the conclusion makes controlling the date of the decree rather than the date the property is to be surrendered under the decree.

Other Exceptions and Objections Relating to the Conclusion of Law

The United States excepts and objects to the failure of the Special Master to propose as a conclusion of law:

1. That the plaintiff is entitled to a judgment against The Ohio Oil Company for the full value of all oil produced by the Company from Section 36 from the beginning of production to the date the property is surrendered to the United States under the decree without deduction of any kind plus interest from the dates of conversion computed on a monthly basis, plus all other income received by The Ohio Oil Company from Section 36.

2. That the plaintiff is entitled to a judgment against The Ohio Oil Company for the full value of all oil produced by The Ohio Oil Company from Section 36, from the beginning of production to the date the property is surrendered to the United States under the decree deducting only direct operating expenses but not capital expenses, taxes, overhead, or royalties, adding thereto interest from the dates of conversion computed on a monthly basis, plus all other [fol. 633] income received by The Ohio Oil Company from Section 36. (Such a conclusion would require consideration only if judgment for the full amount, without any deductions, were not allowed.)

3. That the plaintiff is entitled to a joint and several judgment against the defendants for the full amount of the royalties on the oil extracted from Section 36 by The Ohio Oil Company from the beginning of production to the date the property is surrendered under the decree, paid by The Ohio Oil Company to the State of Wyoming, plus interest computed on an annual basis from the respective dates of payment by The Ohio Oil Company to the State of Wyoming. (So far as The Ohio Oil Company is concerned such a conclusion would require consideration only if no judg-

ment is rendered conformable to the proposed conclusions 1 and 2 above, or if any judgment so rendered fell short of the amount of royalties paid to Wyoming. So far as Wyoming is concerned the United States is entitled to judgment for the full amount of royalties with interest even though no judgment for money is rendered against The Ohio Oil Company.)

Exceptions and Objections to the Proposed Decree

The United States excepts and objects to the penultimate paragraph of the Special Master's recommended decree on the ground that it is contrary to law. See exceptions and objections to conclusion of law No. 2, and paragraphs [fol. 634] Nos. 1, 2, and 3 under "Other exceptions and objections relating to the conclusions of law" *supra*, pp. 13-15.

The United States excepts and objects to the final paragraph of the Special Master's proposed decree on the grounds:

1. That the language concerning costs is ambiguous and confusing in that it contains apparently conflicting provisions. One provision specifies that "none of said parties shall have and recover the costs expended by it herein," while the other recites "that the additional costs incurred in this court in the trial of this cause shall be divided equally between the parties hereto."

2. That if the "additional costs" are divided in such a manner that the United States will bear any portion of the costs of either of the defendants (the Special Master suggests that the costs be equally divided three ways (Report, pp. 36-37)), then the proposed decree would allow costs against the United States and accordingly would be contrary to law.

Respectfully submitted, George T. Washington, Acting Solicitor General. David L. Bazelon, Assistant Attorney General. Marvin J. Sonosky, Walter H. Williams, Attorneys.

November 1946.

[fol. 635] [File endorsement omitted]

[fol. 636] IN THE SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1946

No. 10, Original

UNITED STATES OF AMERICA, Plaintiff,

vs.

STATE OF WYOMING and THE OHIO OIL COMPANY, Defendants

OBJECTIONS AND EXCEPTIONS OF THE DEFENDANTS, STATE OF WYOMING AND THE OHIO OIL COMPANY, TO THE SPECIAL MASTER'S REPORT—Filed December 2, 1946

Come now the Defendants in the above entitled cause and object and except to the report of Nat U. Brown, Special Master herein, filed in the office of the Clerk of this Court on the 14th day of October, 1946, in the following particulars, to-wit:

AS TO THE FINDINGS OF FACT

1. To so much of the 3rd Finding of Fact as finds generally that Plaintiff "now is the owner in fee simple of public lands in Park County, Wyoming, described as Section 36, Township 58 North of Range 100 West of the Sixth Principle Meridian", in that:

(a) Said general finding is contrary to the evidence which admittedly and conclusively supports the Special Master's Findings numbered 4, 5, 6, 7, 8 and that part of Finding No. 9 which reads: "That said Coleman Survey did not subdivide said Township 58 but did survey the [fol. 637] exterior lines of said township and did mark the exterior corners of Section 36 in said Township 58 • • •."

Note:

Plaintiff's Exhibit	7A	(R.....)
Plaintiff's Exhibit	7B	(R.....)
Plaintiff's Exhibit	8A	(R.....)
Plaintiff's Exhibit	9	(R.....)
Plaintiff's Exhibit	10	(R.....)
Plaintiff's Exhibit	12	(R.....)
Plaintiff's Exhibit	13	(R.....)
Plaintiff's Exhibit	28	(R.....)

(b) Said general finding is contrary to the evidence in that it ignores and rejects the intent, purpose and effect of the provisions of Wyoming's school land grant, which are contained in Sections 4 and 5 of Wyoming's Enabling Act.

Note:

(1) Paragraphs 4 and 5 of Defendants' separate defense and Paragraph II of Plaintiff's Reply.

(2) Act of February 26, 1859 (Historical Note, 43 U. S. C. A., Section 851).

(3) Section 14 of the Wyoming Territorial Organic Act as introduced and amended with Congressional Debate which preceded said amendment and found in Volume 39, Pages 2792 to 2802, Part III, Congressional Globe, 2d Ed., 40th Congress.

(4) Sections 4 and 5 of Wyoming's Enabling Act.

2. To so much of the 9th Finding of Fact which finds that the Coleman Surveys, which were accepted and approved by the Commissioner of the General Land Office on December 20, 1892, did not identify or make susceptible of [fol. 638] identification Section 36 of said Township 58, as being contrary to the pleadings and the evidence in that the pleadings and the evidence establish without conflict or contradiction that said accepted and approved Coleman Surveys as to fractional Township 58 North, Range 100 West, established and fixed the exterior lines or boundaries of said fractional township and also established and fixed the corner and quarter corner monuments on said exterior boundaries or lines of said Township 58, and also established and fixed the southeast corner of said Section 36, Township 58, and the quarter section point to the north and the northeast corner, and also fixed and established westerly from the southeast corner the quarter corner and the southwest corner.

Note:

(1) Paragraphs 5, 6, 7, and 8 of Defendants' Answer and Plaintiff's reply to said paragraphs which are found in Paragraphs V, VI, VII and VIII of Plaintiff's Reply.

(2) Plaintiff's Exhibits 9, 10, 12, 13 and 28.

(3) Master's detailed discussion and analysis of this evidence appearing on pages 14 and 15 of The Master's Report.

3. To the 12th Finding of Fact, insofar as it may be considered as finding that Section 36 was on December 6, 1915, subject to withdrawal under the Act of June 25, 1910, 36 Stat. 847 (43 U.S.C.A., Section 141), and that its inclusion in Petroleum Reserve Number 41 was valid on the ground that such finding, if so construed, is contrary to the facts established by the pleadings and the record which disclose that long prior to said purported withdrawal of Section 36, Wyoming had acquired a vested equitable right, title or interest therein.

[fol. 639] 4. For the failure of The Master to find that it was the intent and purpose of Section 14 of the Wyoming Territorial Organic Act that the then unsurveyed Sections 16 and 36 of each township of said territory were thereby withdrawn from the public lands of the United States and should not thereafter be subject to preemption or homestead entry or disposal under other Federal law, but were thereby appropriated and reserved to the fulfillment of the pledge thereof to the incipient State of Wyoming for school purposes.

Note:

(1) Section 14 of said Organic Act as introduced.

(2) The proposed amendment thereof by striking out all matter therein relating to survey and the debate on such proposed amendment (Vol. 39, pp. 2792 to 2802, Part III, Congressional Globe, 2nd Edition, 40th Congress).

(3) Section 14 of said Organic Act, as enacted after the adoption of said proposed amendment.

(4) The enacting clause of the Preamble to Wyoming's Enabling Act.

(5) Article 18, Section 1 of the Constitution of the State of Wyoming and "Journals and Debates of the Constitutional Convention of Wyoming" at Pages 753 to 758.

5. For the failure of The Master to find that it was the intent and purpose of Congress, expressed through Sections 4 and 5 of Wyoming's Enabling Act, strictly to carry into effect the school land pledge and obligation of the United States contained in said Organic Act and that such intention was evidenced by the inclusion in Section 5 of said Enabling Act of the following: "and such land shall not be subject to preemption, homestead entry or any other [fol. 640] entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

Note:

(1) Legislative history of Section 14 of Wyoming's Organic Act and Article 18, Section 1 of the Constitution of Wyoming and the "Journals and Debates of the Constitutional Convention of Wyoming" and the enacting clause of Wyoming's Enabling Act in which its constitution was accepted, ratified and confirmed, all as above referred to.

6. For the failure of The Master to find that Congress, by the above quoted portion of Section 5 of Wyoming's Enabling Act, intended to and did on July 10, 1890, set apart, appropriate and reserve on behalf of Wyoming for school purposes only, all unsurveyed Sections 16 and 36, not theretofore disposed of, in every township of the State.

7. For the failure of The Master to find from the pleadings and the evidence that the Section 36 in question was not, on December 6, 1915, a part of the public lands of the United States subject to disposal under the land laws of the United States by withdrawal for classification or in aid of legislation or for any other purpose which might prevent Wyoming from ultimately acquiring legal title thereto for the purpose of the reservation thereof on its behalf contained in Wyoming's compact with the United States of July 10, 1890.

8. For the failure of The Master to find from the pleadings and the evidence that the approval by the Commissioner of the General Land Office of the Coleman Survey of the exterior boundaries of said Township 58 created and [fol. 641] established said Township 58 as a congressional township with fixed and established boundaries.

Note:

(1) Excerpt from Plaintiff's "Motion for Leave to File Complaint" and "Complaint", appearing on Page 3 thereof, reading as follows:

"While Section 36 was not surveyed until 1916, the Township in which it lies was surveyed prior to that date. The north line of the township is a part of the Montana-Wyoming state line surveyed in 1880. The east, south, and west boundaries of the township were run in 1892 and the survey was accepted by the Commissioner of the General Land Office on December 20, 1892."

(2) Paragraphs 6, 7 and 8 of Defendants' first and separate defense and Paragraphs VI, VII and VIII of Plaintiff's Reply.

(3) Plaintiff's Exhibits 9, 10, 12, 13 and 28, supra.

9. For the failure of The Master to find from the pleadings and the evidence that the approved Coleman Survey of the exterior boundaries of Township 58 established the existence of said Section 36 within said Township, and established the exterior corners of said Section 36 and identified said Section 36 or made the same susceptible of identification.

10. For the failure of The Master to find from the pleadings and the evidence that upon the approval by the Commissioner of the General Land Office on December 20, 1892, of the Coleman Survey of the exterior boundaries of Township 58, the said Section 36 involved herein was, in any event, by reason of the provisions of Section 5, of Wyo- [fol. 642] ming's Enabling Act, set apart, appropriated and reserved on behalf of the State of Wyoming for school purposes only.

11. For the failure of The Master to find specially and with particularity from the pleadings and the evidence that a United States survey of the exterior boundaries of Township 58 North of Range 100 West of the Sixth Principal Meridian was approved by the Commissioner of the General Land Office on the 20th day of December, 1892.

12. For the failure of The Master to find from the trial record and pleadings that the said Section 36 involved

herein was not known mineral land on or prior to July 10, 1890, the date upon which Wyoming's Enabling Act became effective.

Note:

(1) Statement in Plaintiff's "Motion For Leave to File Complaint" and "Complaint" on pages 3 and 4 that "known mineral character of the land would probably become an issue in the case."

(2) Paragraph I of Plaintiff's "further Reply" on Page 5 of Plaintiff's Reply where said issue is tendered.

(3) Record Page — where Plaintiff refused to offer evidence in support of said tendered issue.

13. For the failure of The Master to find from the pleadings and trial record that said Section 36 was not, in any event, known mineral land on or prior to December 20, 1892, the date upon which the Coleman Survey of the exterior boundaries of said Township 58 was approved by the Commissioner of the General Land Office.

Note:

(1) See note to Objection 12.

[fol. 643] 14. For the failure of The Master to find from the pleadings and the evidence:

(a) That the State of Wyoming has been the owner of an equitable right, title or interest in and to said Section 36 since July 10, 1890, superior to any right, title, claim or interest of the United States;

(b) Or that in any event Wyoming has been the owner of such equitable right, title or interest in and to said Section 36 since December 20, 1892.

15. For the failure of The Master to find from the pleadings and the evidence that Wyoming is now and at all times since July 27, 1916, the date of the acceptance or approval by the Commissioner of the General Land Office of the subdivisional survey of said Township 58, has been the owner in fee simple of said Section 36, Township 58 North of Range 100 West of the Sixth Principal Meridian, with relation back to July 10, 1890, or in any event to December 20, 1892.

[fol. 644] As to the Conclusions of Law

1. That the Master erred in his first conclusion of Law in that:

(a) Findings of Fact made by The Master required a general conclusion of law as to title in favor of the Defendant, State of Wyoming.

(b) The Findings of Fact which The Master should have made as hereinbefore specified and which he failed to make, required a general conclusion of law as to title in favor of Defendant, State of Wyoming.

2. That The Master erred in not concluding that Section 14 of the Wyoming Territorial Organic Act withdrew, set apart, appropriated and reserved on behalf of the incipient State of Wyoming for school purposes only all Sections 16 and 36, not then otherwise disposed of, whether surveyed or unsurveyed, of every township in the territory.

3. That The Master erred in not concluding that the provisions of Section 4 and 5 of Wyoming's Enabling Act carried into effect the promise or pledge of said lands, surveyed or unsurveyed, made by the school land reservation of said Organic Act.

4. That The Master erred in not concluding that Sections 4 and 5 of Wyoming's Enabling Act constituted a contractual or compact agreement by the United States with the State of Wyoming by reason of which the unsurveyed Sections 16 and 36, not then otherwise disposed of, in every township of the State were withdrawn, set apart, appropriated and reserved on behalf of the State of Wyoming for school purposes only.

[fol. 645] 5. That The Master erred in not concluding that by reason of said compact provisions above referred to, the State of Wyoming was granted in praesenti, on July 10, 1890, the date of said compact, an equitable right, title or interest in and to said unsurveyed Sections 16 and 36 of such a nature or character that the State of Wyoming thereupon became entitled ultimately to acquire legal title to said lands upon the formal determination of the interior lines of Section 36 in question in a strictly legal sense by an approved United States subdivisional survey thereof and that pending the ripening of said equitable right, title or interest into

legal title, the said lands were not a part of the "public lands" of the United States subject to disposition under the land laws of the United States.

6. That The Master erred in not concluding that on December 6, 1915, the unsurveyed Section 36 herein involved was not part of the public lands of the United States subject to withdrawal or other disposal under 43 U.S.C.A., Section 141, because said land had been theretofore (on July 10, 1890, or in any event, on December 20, 1892,) reserved by Congress on behalf of Wyoming for school purposes only.

7. That The Master erred in not concluding that in any event Wyoming's equitable right, title or interest in and to said Section 36 attached when said land became, in equity, identified or susceptible of identification by reason of the approval by the Commissioner of the General Land Office on December 20, 1892, of the survey of the exterior boundaries or lines of said Township 58.

8. That The Master erred in not concluding that in any event said Section 36, from the said date of the approval of the survey of the exterior boundaries of said Township 58, [fol. 646] was set apart, appropriated and reserved on behalf of Wyoming for school purposes only.

9. That The Master erred in not concluding that said Section 36 was not "known mineral land" on or prior to July 10, 1890, or in any event that said Section 36 was not "known mineral land" on or before December 20, 1892.

10. That The Master erred in not concluding that the Plaintiff was and is estopped as against the sovereign State of Wyoming from asserting title to said Section 36.

11. That the Master erred in not concluding that Wyoming's equitable right, title or interest in and to said Section 36 ripened into a legal title to said lands upon the acceptance by the Commissioner of the General Land Office on July 27, 1916, of a subdivisional survey of said Township 58 with relation back to July 10, 1890.

12. That The Master erred in not concluding that Defendant, State of Wyoming, is entitled to a decree quieting title in it to said Section 36 and adjudging that the Plaintiff has no right, title or interest in and to said land or any part

thereof, and perpetually enjoining the Plaintiff from asserting any right, title or interest in and to said lands or any part thereof.

[fol. 647] As to the Master's Proposed Decree

Defendants object and except to The Master's proposed decree and to the failure of The Master to propose and recommend a decree in favor of the Defendant, State of Wyoming, upon the title issue and generally in favor of Defendants and dismissing Plaintiff's complaint for want of equity.

Donald R. Richberg, Bowen Building, Washington, D. C.; C. R. Ellery, Majestic Building, Cheyenne, Wyo., Attorneys for Defendants, State of Wyoming and The Ohio Oil Company. Louis J. O'Marr, Capitol Building, Cheyenne, Wyo., Attorney General of the State of Wyoming. A. M. Gee, Findlay, Ohio; Hal W. Stewart, Findlay, Ohio; W. H. Everett, Casper, Wyoming, Attorneys for Defendant, The Ohio Oil Company.

[fol. 648] In the Supreme Court of the United States, October Term, 1946

No. 10, Original

United States of America, Plaintiff,

vs.

State of Wyoming and The Ohio Oil Company, Defendants.

Agreed Designation of Record for Printing—Filed November 19, 1946

The plaintiff and the defendants herein by their respective counsel, by agreement, designate for printing the entire record in this case as follows:

1. The complaint;
2. The answer;
3. The reply;
4. The order entered April 25, 1945 appointing Nat U. Brown as Special Master;

5. Transcript of proceedings before the Special Master consisting of pages 1 to 224, inclusive;
6. Plaintiff's Exhibits 1 to 91, inclusive;*
7. Defendants' Exhibit A;
8. The report of Nat U. Brown, Special Master;
9. The exceptions and objections of the United States to the report of the Special Master;
[fol. 649] 10. The exceptions and objections of the defendants to the report of the Special Master;
11. This designation.

It is agreed that the plaintiff will pay one-half the cost of printing the record, and the defendants will pay one-half the cost of printing the record.

George T. Washington, Acting Solicitor General, Attorney for the United States. Louis J. O'Marr, Attorney General of the State of Wyoming; C. R. Ellery, Attorneys for the Defendant State of Wyoming. A. M. Gee, Hal W. Stewart, W. H. Everett, Attorneys for the Defendant The Ohio Oil Company. Donald R. Richberg, Attorney for both Defendants.

[fol. 650] [File endorsement omitted.]

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* Numbers 54, 66 and 71 were canceled and no exhibits appear under those numbers.

P.V

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CLERK

In The Supreme Court of the United States

No. 12, Original, October Term, 1944

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATE OF WYOMING AND THE OHIO OIL COMPANY,
Defendants

REPORT OF NAT. U. BROWN, SPECIAL MASTER

REPUBLIC PUBLISHING COMPANY, YAKIMA, WASH.

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In The Supreme Court of the United States

No. 10, Original, October Term, 1944

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF WYOMING AND THE OHIO OIL COMPANY,

Defendants

REPORT OF NAT. U. BROWN, SPECIAL MASTER

This action was commenced by filing under leave of the court, in August, 1944, of the government's complaint against both defendants. Answer of the defendants was filed on January 24, 1945, and issues were joined by filing of a reply by the United States on the 6th day of March, 1945. Under order of the Court made and entered on the 25th day of April, 1945, a Special Master was appointed. Prior to the taking of any testimony the Special Master called for Memorandums as to the law to be urged by the various parties and in July the plaintiff complied by filing a three

page brief and thereafter the defendants filed a five page typewritten memorandum of authority. All parties being ready the evidence was taken at Cheyenne, Wyoming, beginning on the 10th day of September, 1945. The hearing was concluded on the early evening of September 12, 1945, the record of the proceedings consisting of 223 typewritten pages. The plaintiff was then allowed sixty days to file an opening brief, the defendant sixty days from the time of the service of the government's brief to file an answering brief and the plaintiff fifteen days after the service of the answering brief to file a reply brief.

Pursuant thereto the plaintiff filed an opening brief consisting of fifty-five pages, which was received by the Special Master on November 7, 1945. On January 11, 1946, the Special Master received the answering brief of the defendants consisting of 95 pages. On January 28, 1946, the Special Master received the reply brief of the plaintiff consisting of fifty-five printed pages. It was agreed by and between all parties and the Special Master that in the event he desired an oral argument it would be set later. After, however, a complete study of the briefs and an analysis of the record of the proceedings had at Cheyenne it was determined by the Special Master that further oral argument would serve no useful purpose.

PLAN OF REPORT

This report is in four parts:

1. The pleadings.
2. A discussion of facts and the applicable law.
3. Findings of Fact and Conclusions of Law.
4. Proposed decree.

THE PLEADINGS

The complaint in this case is extremely brief. It simply alleges that the plaintiff is the owner in fee simple of public lands in Park County, Wyoming, described as Section 36, Township 58 North, Range 100 West of the Sixth Principal Meridian, and that the State of Wyoming claims some right, title or interest in that land adverse to the United States. Paragraph V of the complaint alleges:

> "The defendant, The Ohio Oil Company, claims some right, title, or interest in said Section 36 under an oil and gas lease or leases granted to it by the State of Wyoming, and now is and for many years last past has been in the actual possession of said Section 36 actively engaged in the production of gas, oil, and other petroleum products therefrom. The exact amount and value of gas, oil, and other petroleum products extracted by the defendant, The Ohio Oil Company, is not known to the plaintiff, but it is informed and believes, and

upon such information and belief alleges, that the value of the oil and other products extracted by the defendant, The Ohio Oil Company, is in excess of $165,000.00."

A decree is asked:

1. Quieting title in the plaintiff to the land.

2. Requiring defendants to account for all oil, gas and other petroleum products extracted from the land by the defendants or either of them.

3. Adjudging that the plaintiff recover from the defendants the full value of all such extractions, with interest thereon.

The defendants answer jointly, denying that the plaintiff was the owner of the lands in question, admitting that the State of Wyoming claimed some right, title and interest in the land and alleging that it, the State of Wyoming, was the owner in fee simple of the land. The defendants further admitted paragraph V with the following proviso:

"but in this regard, defendants allege that the State of Wyoming and its lessee, The Ohio Oil Company, have at all times, in good faith, understood and believed, and still understand and believe, that the State of Wyoming is now, and for many years has been, the owner of said Section 36 and that the leases granted by the State of Wyoming to defendant, The Ohio Oil Company, were given and granted by the State of Wyoming and accepted and taken by defendant, The Ohio Oil

Company, under and with such good faith, understanding and belief, and any and all exploration and development work done by the defendant, The Ohio Oil Company, in or upon said land was done under said good faith, understanding and belief, and any oil or gas produced by the defendant, The Ohio Oil Company, from said lands was produced under said good faith, understanding and belief; that if the Court should find, adjudge and decree that the United States is now and always has been the owner of said Section 36, then and in that event the defendants allege that on any accounting in respect to the value of the production of said oil or gas, credit should be given to the defendants for any and all proper expenditures made by defendant, The Ohio Oil Company, in the exploration and development of said lands for oil and gas purposes, and for all proper expenditures and costs of operation incurred in the production of said oil and gas; that the defendants further allege in this regard that the costs incurred by defendant, The Ohio Oil Company, in said exploration, development and producing operations has exceeded the value of any oil or gas produced from said lands."

As a separate defense the defendants allege that by virtue of the Organic Act, approved July 25, 1868, creating the Territory of Wyoming, Sections 16 and 36 of each township, were reserved for school purposes and that by virtue of the terms and provisions of the Act admitting the State of Wyoming to the Union, approved July 10, 1890, said Sections were granted to the State of Wyoming for the support of its public schools. The affirmative matter pleaded continues:

"3—That on or about the 3rd day of March, 1892, the Commissioner of the General Land Office, through the United States Surveyor General for the State of Wyoming, informed the State of Wyoming that upon its formal application therefor, a survey of Townships 57 and 58 North, Ranges 97 to 102, inclusive, West of the Sixth Principal Meridian, would be made by the United States for the purpose of identifying the Sections numbered 16 and 36 that were located within the said area.

4—That on or about the 7th day of March, 1892, the State of Wyoming made and filed with the Surveyor General for the State of Wyoming a formal request for a survey by the United States of the townships above mentioned for the purpose of identifying the Sections 16 and 36 that were located or included in said townships.

5—That the request of the State of Wyoming for a survey of said townships for the purpose aforesaid was submitted to the Commissioner of the General Land Office on or about the 11th day of April, 1892, and thereafter, and on or about the 28th day of April, 1892, a contract between the United States and one, Augustus L. Coleman, covering the making by said Coleman of a survey of said townships, was approved by the Commissioner of the General Land Office, and in special instructions which formed a part of said contract, the said Coleman was informed that said survey was being made at the request of the State of Wyoming for the purpose of identifying the Sections, 16 and 36 that were situated within the lands embraced in said contract and to be surveyed by said Coleman pursuant to the terms and provisions of said contract and the special instructions attached thereto and made a part thereof.

6—That on or about the 5th day of August, 1892, the Surveyor General for the State of Wyoming advised the Commissioner of the General Land Office that Coleman had completed the surveys covered by the above mentioned contract and that the same were ready for examination in the field; that thereafter, and on or about the 11th day of August, 1892, the Commissioner of the General Land Office instructed the United States Surveyor General for the State of Wyoming to make a personal inspection of said surveys in the field, and pursuant to said instructions, said Surveyor General made such inspection and prepared field notes thereof; that on or about the 26th day of November, 1892, the plats, transcripts, and field notes made and prepared by said Coleman in connection with his said surveys, and the transcripts and field notes made and prepared by said Surveyor General in connection with his examination in the field of the said Coleman surveys, were filed in the office of the said Commissioner of the General Land Office and submitted to him for his approval.

7—That on or about the 20th day of December, 1892, the Commissioner of the General Land Office, being fully advised, and acting within his authority, accepted and approved the said Coleman surveys.

8—That in respect to said Township 58 North, Range 100 West of the Sixth Principal Meridian, the said Coleman did not subdivide said township, and did not survey and run the interior lines of Section 36 of said township, or mark the interior northwest corner of said Section 36, and the plats, transcripts, and field notes prepared by him and filed in the office of the Commissioner of the General Land Office, as aforesaid, so disclosed; that said Coleman did survey the exterior lines of said

township, and did survey the exterior lines of said Section 36, and said Coleman did mark the three exterior corners of said Section 36, and his plats, transcripts, and field notes filed with the Commissioner of the General Land Office, as aforesaid, so disclosed, and said survey of the exterior lines of said township and of said Section 36, with said marking of said exterior corners of said Section 36, together with the surveys of adjoining townships made by said Coleman under said contract, were sufficient to identify said Section 36.

9—That the United States now, and for the first time to the knowledge of defendants or either of them, contends that title to said Section 36 did not pass from the United States to the State of Wyoming upon the approval and acceptance of said Coleman surveys by the Commissioner of the General Land Office on the ground that Township 58 was not subdivided by said survey thereof and that the interior lines of Section 36 were not surveyed and run and that the interior northwest corner of said Section 36 was not marked.

10—That the plats, transcripts, and field notes covering the Coleman surveys that were filed in the office of the Commissioner of the General Land Office and submitted to him, as aforesaid, were sufficient to identify said Section 36, and the said Commissioner of the General Land Office had authority so to determine, and when said Commissioner of the General Land Office accepted and approved said Coleman surveys made for the purpose aforesaid, he determined, within his authority, that said Coleman surveys sufficiently identified said Section 36.

11—That if the Commissioner of the General Land Office had objected to the Coleman Survey of said Township 58 and of said Section 36 there-

of on the ground that the interior lines of said Section 36 had not been surveyed and that the said Township 58 had not been subdivided or that the northwest corner of said Section 36 had not been marked, then and in that event the State of Wyoming would have requested, and would have obtained, a more detailed survey of said Township 58 and said Section 36 thereof, and such further, more detailed survey would, in any event, have been made and approved long prior to 1900, and the title to said Section 36, free from any objection thereto by reason of any alleged insufficiency of the survey, would have vested in the State of Wyoming; that the State of Wyoming, knowing that said survey was made at its request and for the express purpose of identifying any Sections 16 and 36 located within the area covered by said surveys and well knowing that the said Coleman surveys did identify said Section 36, was lulled into a sense of security by the approval of said surveys by the Commissioner of the General Land Office, and said State of Wyoming, relying upon the approval of said surveys by the Commissioner of the General Land Office as being sufficient to pass the title to said Section 36 from the United States to the State of Wyoming, did not inquire into the situation from the standpoint of the objections to said surveys now made by the United States, and did not request or insist upon a more detailed survey of said Township 58 and said Section 36 thereof; that by reason of the foregoing facts and circumstances, the plaintiff is now estopped in equity from asserting that the approval and acceptance by the Commissioner of the General Land Office of the said Coleman surveys did not pass title to said Section 36 from the United States to the State of Wyoming because of any alleged insufficiency or defect in said Coleman surveys."

The defendants prayed for a decree dismissing the complaint of the plaintiff and adjudging the State of Wyoming to be the owner in fee simple of the land.

By reply the plaintiff denied that the Organic Act vested title in the State of Wyoming to any Sections 16 and 36, and also denied that the Act admitting the State of Wyoming to the Union vested title. Paragraph 3 above quoted was denied on information and belief. Paragraph 4 above quoted was admitted with a slight change in phraseology. The same facts set out in paragraph 5 were pleaded by the plaintiff in a slightly different language. As to paragraph 6, it is virtually admitted with some minor changes in language. The same is true as to paragraphs 7 and 8. As affirmative the plaintiff pleaded that all but the southwest quarter of the southwest quarter of Section 36 was known to be mineral in character prior to December 20, 1892, and continued as follows:

"II. That a survey of Section 36 of said Township 58 was authorized on July 14, 1914, and was accepted by the Commissioner of the General Land Office on July 27, 1916, and that the Coleman survey of the exterior lines of said township 58 did not constitute a survey of the Section 36 in said township.

III. That on December 6, 1915, about seven months before the survey of section 36 in said Township 58 was accepted, the President, under authority of the Act of June 25, 1910, c. 421, 36

Stat. 847, withdrew from location, settlement, sale, or entry all of Section 36 in said Township for classification and in aid of legislation and placed the section along with other lands in Petroleum Reserve No. 41."

Before any evidence was taken before the Special Master the plaintiff asked for leave to amend its complaint as follows: Amending paragraph V to allege the possession by The Ohio Oil Company of only the east half of the northeast quarter of said Section 36, and amending its reply by striking from paragraph I of the affirmative matter the words in the first line: "But the southwest quarter of the southwest quarter," and by striking all the remainder of said paragraph following the word "accepted." It also moved to amend its reply to counter-claim by adding to paragraph I the following words: "and alleges the defendant, The Ohio Oil Company, is in unlawful possession of the East Half of the Northeast Quarter of said Section 36."

The amendments were denied by the Special Master upon the theory that it was submitted to him on the issues of the pleadings as filed and he had no right, over objections of counsel, to permit any amendments. Inasmuch as counsel did object the amendments were not permitted. However, counsel for the defendants stated:

"MR. ELLERY: We would like the record to show that we have no objection to the statement being considered as an application in the Supreme Court for leave to amend there instanter, as far as that is concerned."

Inasmuch as the amendments did not change the general issues before the court, the amendments should be allowed by the court and the complaint and reply be treated as amended to that extent.

A DISCUSSION OF FACTS AND THE APPLICABLE LAW

It is necessary that this phase of this report be combined because in each instance the question to be decided is a mixed one of law and of fact. There being many of these questions I shall discuss each of them under a separate sub-head.

(a) Did the survey of 1892, referred to throughout as the "Coleman Survey" sufficiently identify Section 36 as to vest title in the State of Wyoming upon its approval?

The facts with reference to this survey are clear and are not disputed. On the 7th day of March, 1892,[1] the State of Wyoming, through its Board of Control, wrote to the United States Surveyor General at Cheyenne, Wyoming, in part as follows:

[1] Plaintiff's Exhibit 7-A.

> "The State Board of Control is charged with the duty of selecting the lands donated by the United States Government to the State of Wyoming, at the time of its admission. In order that these selections may be made without delay the Board requests that you cause to be surveyed and subdivided as speedily as possible, the following named townships, to-wit:***"

Townships 57 and 58 and ranges 89 to 109 inclusive were included. On April 11, 1892,[1] a contract was submitted for approval to the Commissioner of the General Land Office by the Surveyor General asking for the approval of a contract dated March 8, 1892,[2] with Augustus L. Coleman. The letter from the State Board of Control was enclosed with the contract. This contract was approved by the Commissioner of the General Land Office on the 28th day of April, 1892. This contract covered, among other things, the establishment of "the exterior and subdivisional lines of Township 57 north, ranges 97, 98, 99, 100, 102 and 102 west, and fractional township 58 north in the same ranges."

In the special instructions dated March 11th, Coleman is advised that the survey of the lands embraced in his contract has been requested by the State Board of Control for the purpose of identifying the lands donated by the State to the General Government and that

[1] Plaintiff's Exhibit 7-B.
[2] Plaintiff's Exhibit 8-A.

he was, therefore, "to subdivide in full every township containing lands valuable for any purpose and upon which you enter for subdivisional work."

That thereafter on the 5th day of August, 1892,[1] the Surveyor General advised the Commissioner at the General Land Office that Coleman had completed the survey under the contract. Whereupon, on August 11, 1892,[2] the Commissioner of the General Land Office authorized the United States Surveyor General for Wyoming to make a personal inspection of the surveys under the contract. On November 26, 1892,[3] the plats and transcript of field notes of the surveys of Mr. Coleman were forwarded to the Commissioner of the General Land Office. These field notes, as to Township 58 north, 100 west, show the establishment of the exterior boundaries and also the setting of corner and quarter corner monuments on the exterior boundaries. The field notes and the plats were submitted by the Surveyor General to the Commissioner of the General Land Office and were, on the 20th day of December, 1892,[4] accepted and approved by the Commissioner. The plat shows the establishment of the following parts of Section 36, the section with which we are interested: The southeast corner thereof, the quarter section point to the north and the northeast corner

[1] Plaintiff's Exhibit 9.
[2] Plaintiff's Exhibit 10.
[3] Plaintiff's Exhibits 12 and 13.
[4] Plaintiff's Exhibit 28.

thereof. Westerly from the southeast corner there was established the quarter corner and the southwest corner. However, no interior lines were established. The defendants take the position squarely that this survey was sufficient in equity to identify or make susceptible of identification Section 36 and that upon its approval Section 36 was withdrawn and set apart from the public lands of the United States and was irrevocably appropriated to the Wyoming school grant.

Upon first glance it would seem that this contention is sound and should be accepted by this court as the basic fact from which to proceed. The difficulty arises, however, by reason of the fact that these points on the boundaries of Section 36 might or might not have remained as first surveyed under the laws and regulations in force at the time of the 1892 survey. We must accept the situation as of the time the survey was made and not tie it into the later survey. The law, Secs. 2395-2397, now codified as 43 U.S.C. Secs. 751-753, provide specifically:

> "Sec. 2395. The public lands shall be divided by north and south lines run according to the true meridian, and by others crossing them at right angles, so as to form townships of six miles square, unless where the line of an Indian reservation, or of tracts of land heretofore surveyed or patented, or the course of navigable rivers, may render this impracticable; and in that case this rule must be departed from no further than such particular circumstances required.

Second. The corners of the townships must be marked with progressive numbers from the beginning; each distance of a mile between such corners must be also distinctly marked with marks different from those of the corners.

Third. The township shall be subdivided into sections, containing, as nearly as may be, six-hundred and forty acres each, by running through the same, each way, parallel lines at the end of every two miles; and by making a corner on each of such lines, at the end of every mile. The sections shall be numbered respectively, beginning with the number one in the northeast section and proceeding west and east alternately through the township with progressive numbers till the thirty-six be completed."

It is to be noticed, therefore, that this survey did not comply with the third paragraph of this section and was not intended, therefore, to be a subdivisional survey of the township. The same regulations of the Department then in effect provided that upon starting a survey for the subdivision of a township if it was found that the exterior boundaries had been incorrectly run or marked or that the corners established thereon had been obliterated, the deputy should re-survey so much of such exterior boundary as might be necessary and establish new corners wherever necessary. This is found in the Manual dated January 1, 1890 on page 40 thereof.

That the corners of 36 as apparently established by the Coleman Survey did not specifically identify 36 is clearly established by the 1916 survey. It is not neces-

sary to recite the entire history of the 1916 survey as shown by the exhibits in this case but simply to point out that the contract provided that fractional Township 58 was to be subdivided. In the instructions to the surveyor the Surveyor General said "The condition of the boundaries of this township will influence the method of subdivision and should first be determined." He further stated that inasmuch as surveyed areas closed on the west three and one-half miles of the south boundary, that much of the boundary should be preserved but that the remaining two and one-half miles (which includes the south boundary of 36), if found defective, should be re-surveyed. The field notes of the so-called 1916 survey show a resurvey of a part of the south and east boundaries of Township 58 north and a retracement of the east and south boundaries of 58 north. These notes disclose that in the retracement of the north boundary of Township 57, which constitutes the south boundary of Township 58, there was a substantial variance. In a retracement of the east boundary of 58 we also find variances.

While it is true that these variances were within the prescribed limit then fixed for variances, of fifty links, yet, until the survey of 1916 was completed and accepted by the Commissioner of the General Land Office on July 27, 1916, it cannot be said that any boundary or corner of Section 36 was definitely established.

This court has held that lands may be unsurveyed even though there has been a complete approved survey at an earlier period where the lines and marks of the original survey have become completely obliterated. *Cox vs. Hart* 260 U. S. 427. That case also expressly holds:

> "A survey of public lands does not *ascertain* boundaries, it *creates* them."

To the same effect:

Sawyer vs. Gray, 205 Fed. 160;

Carroll vs. United States, 154 Fed. 425;

The supreme court of California and the Land Office has followed this rule of law consistently.

Bullock vs. Rouse, 81 Cal. 590;

Powers vs. Jackson, 50 Cal. 429;

Middleton vs. Low, 30 Cal. 596;

Robinson vs. Forrest, 29 Cal. 317;

Barnhurst vs. State of Utah, 30 L. D. 314;

Harris vs. State of Minnesota, 1 Copp L. L. 631.

(b) When, if at all, did title vest in the State?

The defendants make a very plausible and effective argument that under the Wyoming Organic Act and Wyoming Enabling Act, Sections 16 and 36 of each

township were withdrawn and set apart from the public lands of the United States and appropriated to the school land reservation.

Attention is first called to the Act of February 26, 1859, which provides in part:

> "Where settlements, with a view to preemption, have been made before the survey of the lands in the field, which are found to have been made on Sections 16 or 36, those sections shall be subject to the preemption claim of such settler; and if they, or either of them shall have been reserved or pledged for the use of schools or colleges in the state or territory in which the lands lie, other lands of like quantity are appropriated in lieu of such as may be patented by preemptors." (43 USCA P. 108)

This is followed by Section 14 of the Wyoming Territorial Organic Act which as introduced in Congress read:

> "And Be It Further Enacted, That when the lands in the said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, Sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same.",

but which, during debate in the lower house was amended to read as follows:

> "That Sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to public schools in the State or States hereafter to be erected out of the same."

It is to be noticed that this leaves out of the Act the provision:

> "That when the lands in said Territory shall be surveyed, under the direction of the Government of the United States, preparatory to the bringing the same into market."

Section 4 of the Wyoming Enabling Act provides in part:

> "That Sections numbered 16 and 36 in every township of said proposed state, ... are hereby granted to said state for the support of common schools."

Section 5 provides in part:

> "That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. .....and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

The defendants seriously contend that this Act constitutes a contract between the United States and the State of Wyoming, and

> "Under this compact by a clear and specific provision thereof, the United States granted to Wyoming, in praesenti, Sections 16 and 36 of every township in the State and further clearly and specifically contracted and agreed that the unsurveyed Sections 16 and 36 were appropriated to the grant and should not be subject to any type of entry under the land laws of the United States, but were reserved for school purposes only."

Were this question not foreclosed by a decision of this court in *United States vs. Morrison*, 240 U. S., 192, the arguments of the defendants would be unanswerable. It was so held by the Supreme Court of the State of Washington in *State vs. Whitney*, 66 Wash. 473. The Supreme Court of the State of Washington in that case found the grant in the State's Enabling Act, using precisely the same words as in the Wyoming Act, was a grant in praesenti saying:

> "We therefore hold that the words of grant in our enabling act are words of present grant, and that when, by the adoption of its constitution, the state affirmed the provisions of the enabling act and such constitution was approved by the United States, and the State of Washington thereupon fully admitted into the Union, the grant defined in the enabling act took effect as of its date, and passed the entire title of the United States as fully and completely as though such Sections 16 and 36 had been previously surveyed, and were then capable of exact identification."

This decision of the Supreme Court was prior to the decision of this court in the Morrison case. While

there is some slight distinction in phraseology in various Organic Acts and various Enabling Acts it is obvious from a reading of the opinion of this court in the Morrison case that the court read into the various statutes a congressional intention to treat the Western public land states precisely the same and followed the ruling in *Heydenfeldt vs. Daney Gold & Silver Mining Co.* 93 US 634 dealing with the Nevada grant.

The court said, at page 606:

> "But Congress used the same phrase substantially in nearly every one of the school grants, and it was the manifest intention to place the states on the same footing in this matter. The same clause, relating to the same subject, and enacted in pursuance of the same policy, did not have one meaning in one grant and a different meaning in another; it covered other dispositions, whether prior or subsequent, if made before the land had been appropriately identified by survey and title had passed. Nor is a distinction to be observed between mineral lands and other lands, if in fact Congress disposed of them. The validity of the disposition would not be affected by the character of the lands, although this might supply the motive for the action of Congress. We regard the decision in the Heydenfeldt Case as establishing a definite rule of construction."

And concluded at page 607:

> "We conclude that the State of Oregon did not take title to the land prior to the survey; and that until the sections were defined by survey and title had vested in the state, Congress was at lib-

erty to dispose of the land, its obligation in that event being properly to compensate the state for whatever deficiencies resulted."

This makes the question no longer an open one. If for no other reason we should under the rule of *stare decises* be compelled to follow that decision. The rule laid down in the Morrison case has become a rule of property throughout the Western land grant states. On the basis of that rule lieu land selections have been made and other valuable property rights have attached one way or the other. If it laid down an incorrect rule of law it is much too late to correct it.[1]

It is to be noticed that under a situation precisely the same as the situation effecting the State of Wyoming the Supreme Court of the State of Washington, after the decision in the Morrison case, reversed its former opinion and held that the State's title did not vest until after the survey.

In the case of *Thompson vs. Savage*, 110 Wash. 486 the court says:

"In the light of the decision of the federal Supreme Court in the Heydenfeldt Case, as interpret-

[1] In applying the rule of strict construction to school land grants it has always seemed to me that the court did not give consideration to the true relationship created between the Federal Government and the States by these enactments. In each case the grant created a charitable trust, with the Government the trustor, the State the trustee, and the future schools and school children the beneficiaries. The rule of construction, therefore, should have been a liberal one favoring the trustee and the beneficiaries and where the meaning was debatable that construction which increased rather than diminished the corpus should have been adopted.

> ed in the Morrison Case above quoted from, we cannot escape the conclusion that the decision of this court in *State vs. Whitney*, holding that our school land grant was one in praesenti of unsurveyed as well as surveyed sections, completely vesting title in all of said sections at the time of the grant, must now be regarded as erroneous, and no longer controlling upon that federal question."

We agree with that statement.

It follows, therefore, that the State having acquired no title to the land prior to its reservation by the President on December 6, 1915, which was some seven months before approval the survey of Sections 36, the position of the United States as to title must be accepted and a decree entered quieting title in the United States to said sections.

ACCOUNTING

In dealing with the accounting feature of this case, of course, one of the first things is to determine the measure of damages. The government has made two contentions: First, that the government having established its title to the property that alone "means that the company has been a trespasser in possession of government property during its entire period of operations." From the argument that follows that statement on page 34 of the government's opening brief it is apparent that it is the contention of the plaintiff

that having established ownership of the land in the plaintiff there is a presumption of fact that the trespass was willful.

In the hearing of this case the Special Master took the position that not only was there no burden placed upon the state and its Lessee to prove good faith but that the plaintiff by its pleadings had negatived any bad faith. Before the question arose the Special Master stated: (page 67 of the transcript.)

> "In the consideration of any transaction between parties such as this lease between the State of Wyoming and the defendant, The Ohio Oil Company, there is always a presumption of good faith, and I believe it is my duty to indulge in that. Even if the pleadings on the part of the defendants in this case were utterly silent on that point that they entered into this lease in good faith, my present thought is that it would be my duty to indulge in the presumption that they did act in good faith under a claim of title.
>
> "The Government has also pleaded in its complaint that The Ohio Oil Company was in possession as a lessee under the State of Wyoming and under a claim of title. If the Government had intended to charge willful and malicious trespass or bad faith, it seems to me that it was the duty of the Government to so charge, and, in the absence of any affirmative charge of bad faith, the Special Master is of the present opinion that he will not hear testimony as to that; that he will not hear testimony that goes to the question of bad faith, because I do not believe bad faith has been properly pleaded."

Nothing that happened thereafter caused him to change his opinion. This is largely based upon paragraphs IV and V of the complaint herein, which read:

> "IV. The State of Wyoming claims some right, title or interest in said land adverse to the United States.
>
> "V. The defendant, The Ohio Oil Company, claims some right, title, or interest in said section 36 under an oil and gas lease or leases granted to it by the State of Wyoming, and now is and for many years last past has been in the actual possession of said Section 36 actively engaged in the production of gas, oil, and other petroleum products therefrom. The exact amount and value of gas, oil, and other peteroleum products extracted by the defendant, The Ohio Oil Company, is not known to the plaintiff, but it is informed and believes, and upon such information and belief alleges, that the value of the oil and other products extracted by the defendant, The Ohio Oil Company, is in excess of $165,000.00."

The evidence and the only evidence that was offered to prove bad faith or a malicious and willful trespass were letters and other documents and identifications from 49 to 91 inclusive. When asked the plaintiff's purpose in offering these documents Mr. Sonosky answered: (page 215 of transcript.)

> "These exhibits are for the purpose of establishing that the defendants were willful trespassers on the land in controversy for all or a part of the time in controversy, and they had full knowledge of the title and ownership of the United States."

Again when he was asked how the proferred exhibits would tend to prove that The Ohio Oil Company or the State of Wyoming was a willful trespasser, he simply answered, "knowledge."

However, even though all of these documents were in evidence and considered, the mere fact that they would show that for a great many years the defendants had knowledge of the fact that the United States was claiming title to the lands in question, would not change my opinion that the trespass here was an innocent one under claim of right so as to entitle the defendants to an off-set.

This is based very largely upon the language used by this Court in *Gulf Refining Co. vs. United States*, 260 U. S. 125. In that case this Court held that trespasser could continue in possession of lands originally taken in good faith even after a judgment against him and not be charged with willful trespass. Here we have a situation where the defendant State at all times in perfect good faith asserted title to the land in question and believed that it had title.

The Ohio Oil Company was placed in possession by the State under the same belief and remained in undisturbed possession until the institution of this suit. How, then, is it to be said that there was such a malicious trespass as to entitle the plaintiff to recover the full value of the oil extracted without deduction of any kind?

It is not necessary to discuss in too much detail the proper measure of damages to apply in this case, nor, to decide what the rule of damages is under the laws of the State of Wyoming, although unquestionably this is the equitable rule rather than the strict common rule contended for by plaintiff.

Martel vs. Hall Oil Co., 36 Wyoming, 166.

We are dealing with an action between two sovereigns, the United States of America and the State of Wyoming. The situation is precisely the same as an action between two states and must be treated in the same manner. In the case of the *Commonwealth of Virginia vs. State of West Virginia*, 220 U. S. 1, the Court speaking through Mr. Justime Holmes said:

> "The case is to be considered in the untechnical spirit proper for dealing with a quasi international controversy, ****."

The rule of damages applied, therefore, is one that appeals to the conscience of the Court and that rule is the one that was applied by the court in *United States vs. Standard Oil Company of California*, 21 Fed. Supp. 645, 107 Fed. 2d 402. *Mason vs. United States*, 260 U. S. 545.

The defendants therefore should be and will be permitted to have allowed as credits and deducted from the value of oil extracted and other earnings, all proper expense of exploration, development and operation.

RECEIPTS

There is no dispute as to the amount of receipts of the operations of The Ohio Oil Company of the land in question. The grand total of receipts amounted to $151,011.23, plus $17,306.30 in royalties paid to the State of Wyoming, making a total to December 31, 1944 of $168,317.53.

DISBURSEMENTS

Total expenditures of The Ohio Oil Company shown by the accounting were in the amount of $215,490.97, plus the royalty payment of $17,306.30. These expenditures are broken down as follows:

Capital	$118,628.84
Operating Expense	70,083.73
Taxes	4,317.40
Overhead	22,461.00
Royalty paid	17,306.30
Total	$232,797.27

The capital expenditures are broken down as follows:

Total cost of Well No. 1	$ 16,904.22
2	24,457.40
3	25,738.67
4	29,835.54
5	48.50
Water Well No. 1	850.24
2	2,581.55
3	2,765.78
Lease Equipment	15,446.94
Total Capital Expenditures	$118,628.84

OBJECTIONS TO SPECIFIC ITEMS

Specific objection, in addition to the general objection to allowance of any expenditures, was made by the plaintiff to the cost of the five oil wells, three water wells and lease equipment, on the grounds that those items represent permanent improvements on the lands placed thereon by The Ohio Oil Company for its own benefit and without the consent of the plaintiff.

A further specific objection of expenditure was made for the allowance of Wells Nos. 4 and 5 on the ground that they did not constitute an improvement to the land and did not contribute to the production of oil.

Specific objection was made to the allowance of taxes on the ground that if the United States itself had extracted the oil it would not have been required to pay taxes.

Specific objection was made to the item of over-head on the grounds that the item had never been charged on the books of the company directly against its operations, but is simply an arbitrary allocation of a portion of administrative and general expenses: (page 201 of transcript.)

> "***including such items as salaries and expenses of officers, superintendents and clerks, the cost of office supplies, insurance, pensions, legal services, telephones, and so forth, depreciation of

company office buildings and office equipment in Findlay, Ohio, and Casper, Wyoming, and other miscellaneous items in connection with its general office in Findlay and its division office for the entire State of Wyoming.

"The Government further objects to the overhead, on the ground that those charges represent fixed expenses which the Company would have incurred even if it had never trespassed on Section 36.

"The Government further objects on the ground that even if the Ohio is an innocent purchaser, it is not entitled to deduct a single penny not spent directly on Section 36 in the extraction of oil from that section."

The plaintiff also objected to allowance of any royalties amounting to $17,306.30 paid to the State of Wyoming.

The plaintiff was given an opportunity to offer evidence in support of its objection but no evidence was offered.

(a). As to the objection to the allowance of the capital expenditures and for non-producing Wells No. 4 and 5, the government bases its position upon language used in *United States vs. Midway Northern Oil Company* 232 Fed. 619. In that case the court said at page 633:

"The value of the oil taken is to be ascertained by its market value at the time it was used or dis-

> posed of by the defendants, less the cost of extracting and marketing the same, excluding from such costs the work of sinking wells, development or improvement, or in discovering or reaching the oil."

This language standing alone would justify the government's contention. However, in the same paragraph the court further stated:

> "They should be allowed, however, to set off against the damages properly chargeable to them the value of any permanent and useful improvements to the property made by them, such as producing wells, permanent buildings, and the like***."

Reading these two quotations together, it is obvious that the court had in mind that there could be no recovery against the owner for the value of improvements made, if the value or cost of such improvements exceeded the return.

In thise case the defendant, The Ohio Oil Company, is asking the expenditures as an off-set and asks no recovery over and above the value of the oil recovered.

There was no evidence offered to show that any of these expenditures were made improvidently. The court necessarily knows that in the exploration and development of an oil field well, dry holes will be drilled, and in many cases other large expenditures will be made upon which no return will be had. Oil, like gold,

is where you find it and in the absence of any evidence tending to show that these expenditures in the drilling of the oil wells, the water wells and the non-producing Wells 4 and 5, were not necessarily made in the exploration and development work, these expenditures should and will be allowed.

In this case we are faced with a situation, because of the delay of the government in bringing its action, which should appeal much more strongly to the conscience of the court than the situation with which Judge Yankwich dealt in the case of *United States vs. Standard Oil Company of California*, 21 Fed. Supp. 645, affirmed by the Circuit Court of Appeals of the Ninth Circuit, 107 Fed. 2nd, 402, and we can adopt his language where he said:

> "And our disagreement with the government, as to some of the items, is not so much a disagreement as to the law, but a disagreement as to the fair and equitable method to be used in balancing the equities as between the sovereign reclaiming a part of the public domain and an invader who, in good faith, in the solemn belief of the validity of his claim of title to a portion of the public domain, has spent its substance in developing it and protecting it, only to have the government, after delay, admittedly inexcusable, on the part of its officers, reclaim its own."

The Ohio Oil Company in this case took possession of this property early in 1917 and its first Well was started apparently in February of that year. From

practically without abatement from then on until the end of the accounting period. Its possession was open and notorious and must necessarily have been known to the plaintiff, yet, nothing was done by the government to assert its claim to the land until August of 1944. In later years the return from the field increased and the Company is now approaching the period when it could expect to get not only the return of the expenditures it would appear that work continued its capital investment but a profit from its operations. It would be wholly inequitable to permit the government to reap the profit from this work without allowance to that defendant.

(b). As to the objection to the taxes, both personal and yield taxes, paid on the personal property and to the state, there should be allowance. While it is true that if there had been a direct operation of this field by the government no taxes could have been collected, however, it is not so clear that had the government operated through a Lessee, as it ordinarily does, that taxes could not have been collected from the Lessee.

Wilson vs. Cook, 66 Sup. Ct. 633, 90 Law Ed. Adv. 609.

(c). Also the objection as to over-head was not well taken. Whether we accept the statement of the government or the statement of the company as to just how this amount was arrived at, yet, there is nothing

before the court from which it could be held that the method pursued was not within good bookkeeping practices, nor, does it appear to be exorbitant. At any rate no evidence was offered in support of this objection and we cannot, from the state of the record, say that it was not a proper charge. Here again we are impressed with the statement of Judge Yankwich that:

> "In the case of a corporation operating on a large scale, it is considered legitimate accounting practice to allocate general over-head expenses to particular operations upon a percentage basis. In our era of highly developed industrial organizations, management is a legitimate part of operations. See *Lytle, Campbell & Co. vs. Somers, Fitler & Todd Co.*, 1923, 276 Pa. 409, 413, 120 A. 409, 27 A. L. R. 41; 46 C. J. 1162. It is so considered in computing costs. See *Ft. Dearborn Trust & Savings Bank vs. Skelley Oil Co.*, 1930, 146 Okl. 179, 293 P. 557; *New Domain Oil & Gas Co. vs. McKinney*, 1920, 188 Ky. 183, 221 S. W. 245."

(d). The government's objection to allowance of the royalties paid to the State of Wyoming is sound and that expenditure should be disallowed *Mason vs. United States*, 260 US 545.

However, eliminating that amount from the expenditures claimed by The Ohio Oil Company the amount received from the oil production falls far short of expenditures that have been allowed. Hence, no recovery for the amount should be had at this time.

The accounting in this case runs only to December 31, 1944. Necessarily there must be an additional accounting for the period of 1945 and the ensuing period until the judgment is final in this case.

Inasmuch as the present deficit in operations amounts to $47,173.44, without royalties included, even though the royalties paid be disallowed as an expenditure, it is hardly possible that this deficit will have been wiped out and a credit established by that accounting. However, in the event that it is, the plaintiff should have judgment against the company for such amount, such judgment to be joint and several against both defendants for an amount not to exceed the royalties paid by the defendant company to the defendant state. It should not be necessary to re-refer this matter for an accounting, but the parties should agree upon the figures and submit them to the court.

As to the costs in this case, they should be equally divided between the three parties, namely, one-third to plaintiff, and one-third to each of the defendants. This being an equitable case, and as pointed out above, being considered in an untechnical spirit, it would seem that the plaintiff, while being the prevailing party upon the major issue of title, yet, it is not wholly without fault in permitting this matter to go over for so

long a period of time. It does not, therefore, seem just or equitable to impose all costs on the defendants and one-third seems to be a proper amount to assess against it. In dividing the other two-thirds equally between the two defendants consideration has been given to the fact that while The Ohio Oil Company has probably sustained a large loss, the State has not been out of pocket in the matter.

It is, therefore, the recommendation that the court make the following

FINDINGS OF FACTS

1.

The jurisdiction of this court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States.

2.

The Ohio Oil Company is a corporation organized, existing and doing business under and by virtue of the laws of the State of Ohio with its principal place of business at Findlay, Ohio.

3.

At all times herein material the plaintiff was and now is the owner in fee simple of public lands in Park County, Wyoming, described as Section 36, Township

58 North of Range 100 West of the Sixth Principal Meridian.

4.

That on or about the 3rd day of March, 1892, the Commissioner of the General Land Office, through the United States Surveyor General for the State of Wyoming, informed the State of Wyoming that upon its formal application therefor, a survey of Townships 57 and 58 North, Ranges 97 to 102, inclusive, West of the Sixth Principal Meridian, would be made by the United States for the purpose of identifying the Sections numbered 16 and 36 that were located within the said area.

5.

That on or about the 7th day of March, 1892, the State of Wyoming made and filed with the Surveyor General for the State of Wyoming a formal request for a survey by the United States of the townships above mentioned for the purpose of identifying the Sections 16 and 36 were located or included in said townships.

6.

That the request of the State of Wyoming for a survey of said townships for the purpose aforesaid was submitted to the Commissioner of the General Land

Office on or about the 11th day of April, 1892, and thereafter, and on or about the 28th day of April, 1892, a contract between the United States and one, Augustus L. Coleman, covering the making by said Coleman of a survey of said townships, was approved by the Commissioner of the General Land Office, and in special instructions which formed a part of said contract, the said Coleman was informed that said survey was being made at the request of the State of Wyoming for the purpose of identifying the Sections 16 and 36 that were situated within the lands embraced in said contract and to be surveyed by said Coleman pursuant to the terms and provisions of said contract and the special instructions attached thereto and made a part thereof.

7.

That on or about the 5th day of August, 1892, the Surveyor General for the State of Wyoming advised the Commissioner of the General Land Office that Coleman had completed the surveys covered by the above mentioned contract and that the same were ready for examination in the field; that thereafter, and on or about the 11th day of August, 1892, the Commissioner of the General Land Office instructed the United States Surveyor General for the State of Wyoming to make a personal inspection of said sur-

veys in the field, and pursuant to said instructions, said Surveyor General made such inspection and prepared field notes thereof; that on or about the 26th day of November, 1892, the plats, transcripts, and field notes made and prepared by said Coleman in connection with his said surveys, and the transcripts and field notes made and prepared by said Surveyor General in connection with his examination in the field of the said Coleman surveys, were filed in the office of the said Commissioner of the General Land Office and submitted to him for his approval.

8.

That on or about the 20th day of December, 1892, the Commissioner of the General Land Office, being fully advised, and acting within his authority, accepted and approved the said Coleman surveys.

9.

That said Coleman survey did not subdivide said Township 58 but did survey the exterior lines of said Township 58 and did mark the exterior corners of Section 36 in said Township 58, but that no survey was made at that time which subdivided said township into sub-sections, nor did the survey so identify or establish said section as to identify or make susceptible of identification Section 36.

10.

That the State of Wyoming in good faith treated said survey as a complete survey of Township 58 and that it carried out the purposes for which said survey was requested, namely, identification of Section 36, and the State, also in good faith, since said time claimed title to said section and in 1917 placed the defendant, The Ohio Oil Company, in possession of said section under a lease from the State of Wyoming.

11.

That a survey of Section 36 of said Township 58 was authorized on July 14, 1914 and was accepted by the Commissioner of the General Land Office on July 27, 1916.

12.

That on December 6, 1915 about seven months before the survey of Section 36 in said Township 58 was accepted, the President, under authority of the Act of June 25, 1910, c. 421, 36 Stat. 847, withdrew from location, settlement, sale, or entry all of Section 36 in said township for classification and in aid of legislation and placed the section along with other lands in Petroleum Reserve No. 41.

13.

That the defendant, The Ohio Oil Company, has received as gross proceeds from the operations of its

Wells on said property the total sum of $168,317.53 until December 31, 1944, and has made total expenditures in the amount of $232,797.27, of which amount $17,306.30 was paid as royalties to the State of Wyoming.

From which said Findings of Fact, the Special Master makes the following

CONCLUSIONS OF LAW

1.

That the plaintiff is entitled to a decree quieting title in it to said Section 36, and adjudging that the defendant have no right, title or interest in and to said land or any part thereof, and perpetually enjoining the defendants from asserting any right, title or interest in and to said land or any part thereof.

2.

That an additional accounting should be had covering the period from January 1, 1945, to the date of the decree and judgment entered accordingly, the plaintiff to take nothing by way of a money judgment unless the operations for that period of time discloses the value of oil extracted in excess of the costs of operations, plus the deficit in operations now existing.

PROPOSED DECREE

It is recommended that the following decree be entered:

IT IS ORDERED, ADJUDGED AND DECREED, that title to Section 36, Township 58 North, Range 100 West of the Sixth Principal Meridian, lying in the State of Wyoming, be and the same is hereby quieted in the United States of America, and it is further

ORDERED, ADJUDGED AND DECREED, that the defendants, and neither of them, have any right, title or interest in and to said land or any part thereof, and it is further

ORDERED, ADJUDGED AND DECREED, that the defendants, and each of them, are hereby perpetually enjoined from asserting any right, title or interest in and to said land, or any part thereof, and it is further

ORDERED, ADJUDGED AND DECREED, that the defendants surrender possession of said land to the plaintiff, United States of America on or before sixty (60) days after the entry of this judgment, and it is further

ORDERED, ADJUDGED AND DECREED, that the parties hereto jointly file a statement with the court at the expiration of said sixty (60) day period, or

earlier if said surrender is made earlier showing all the receipts from said property subsequent to the 1st day of January, 1945, and all proper expenses of operations for said period, and in the event said receipts exceed said expenditures by an amount in excess of $47,173.44, that the plaintiff have judgment against the defendant, The Ohio Oil Company, in the amount of said excess, such judgment to be joint and several against both defendants in an amount not to exceed the entire royalties paid to the defendant State of Wyoming by the defendant, The Ohio Oil Company, and it is further

ORDERED, ADJUDGED AND DECREED, that none of said parties shall have and recover the costs expended by it herein, and that the additional costs incurred in this court in the trial of this cause shall be divided equally between the parties hereto.

Respectfully submitted.

NAT. U. BROWN
Special Master

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FILED
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No. 10, Original

In the Supreme Court of the United States

OCTOBER TERM, 1946

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF WYOMING AND THE OHIO OIL COMPANY

EXCEPTIONS AND OBJECTIONS OF THE UNITED STATES TO THE REPORT AND RECOMMENDATIONS OF THE SPECIAL MASTER

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 10, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF WYOMING AND THE OHIO OIL COMPANY

EXCEPTIONS AND OBJECTIONS OF THE UNITED STATES TO THE REPORT AND RECOMMENDATIONS OF THE SPECIAL MASTER

The United States excepts and objects to the Special Master's report and recommended findings of fact, conclusions of law and decree in the particulars hereinafter set forth. Before specifying the Government's exceptions and objections a preliminary discussion may be helpful. The case splits into two main issues: the title question—whether the United States is the owner of the Section 36 in controversy; the accounting question—whether the United States is entitled to recover the value of the oil extracted by the defendants from Section 36 and, if so, the measure of damages to be applied. The Special Master held in favor of the United States on the title issue and in favor of the defendants on the accounting issue. He made 13 findings of fact.

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Findings 1 and 2 concern the jurisdiction of the Court and the corporate existence of The Ohio Oil Company, and as to these there is no objection. Findings 3–9, inclusive, 11 and 12 relate to the title issue; findings 10 and 13 to the accounting issue.

THE FINDINGS RELATING TO THE TITLE ISSUE

The Special Master found that, at all times material, the United States was and now is the owner in fee of the land in controversy (Finding 3). This finding is fully supported by the law and evidence and, accordingly, is dispositive of the title issue. However, in addition, the Special Master made eight findings of probative facts apparently intended to lead to the ultimate fact of ownership in the United States as set out in Finding 3 (Findings 4–9, 11, 12). The plaintiff considers some of these findings of probative facts to be erroneous or inaccurate in whole or in part. These errors do not affect the finding of the ultimate fact of ownership. For that reason there would seem to be no need formally to except to the findings of probative facts relating to the title issue. Nevertheless, in the interest of obtaining correct findings, the Court's attention is respectfully directed to what the Government considers to be errors and inaccuracies in those findings.

Finding 4.—This entire finding is objectionable on the ground that it is clearly erroneous since there is no evidence to support it.

Finding 5.—So much of this finding as follows the phrase "above mentioned" is objectionable on

the ground that it is clearly erroneous since there is no evidence to support it.

Finding 6: Objection 1.—This entire finding is objectionable on the grounds that it is inconsistent with Wyoming's clear admission in open court of the facts as pleaded by the United States in Paragraph V, pp. 2–3 of its reply, and is contrary to the unequivocal declaration of the Special Master in open court that he would find the facts as admitted by Wyoming. So much of this finding as purports to show that the purpose of Wyoming's request for a survey was to identify Sections 16 and 36 is objectionable on the additional ground that there is no evidence to support it.

Objection 2.—The United States further objects to the failure of the Special Master to find the facts in the language set forth in Paragraph V, pp. 2–3, of the Government's reply on the grounds that Wyoming in open court admitted the allegations of Paragraph V, pp. 2–3 of the reply and the Special Master pronounced in open court that he would find the facts as admitted.

Finding 7: Objection 1.—The entire finding is objectionable on the grounds that (a) it is inconsistent with Wyoming's clear admission in open court of the facts as pleaded by the United States in Paragraph VI, pp. 3–4, of its reply; (b) it is contrary to the unequivocal declaration of the Special Master in open court that he would find the facts as admitted by Wyoming; (c) it is

in opposition to the action of the Special Master in refusing to permit the Government to make proof of the allegations of the reply so admitted by Wyoming; and (d) it reflects an incomplete and inaccurate picture of the facts established by the evidence.

Objection 2.—The United States further objects to the failure of the Special Master to find the facts in the language set forth in Paragraph VI, pp. 3–4, of the Government's reply on the grounds that (a) Wyoming in open court admitted the allegations of Paragraph VI, pp. 3–4 of the reply, (b) the Special Master pronounced in open court that he would find the facts as admitted, and (c) the Special Master refused to permit the Government to make proof of the allegations of Paragraph VI, pp. 3–4 of the reply.

Objection 3.—The United States further objects to the refusal of the Special Master to admit into evidence each of the following exhibits, marked for identification and offered in evidence by the plaintiff: Exs. 10, 11, 14, 16, 17, 20–23, 25, and 26. The ground for this objection is that the exhibits were refused admission into evidence solely for the reason that their contents stood uncontroverted by Wyoming's admission of the facts as pleaded by the United States in Paragraph VI, pp. 3–4, of its reply. The Special Master announced he would find the facts as admitted by Wyoming and therefore no need existed for the United States to make proof of the admitted

allegations. Since the Special Master did not abide by his declaration in open court to find the facts as admitted by Wyoming, he erred in refusing to admit into evidence the exhibits above specified.

Finding 8.—No exceptions or objections.

Finding 9.—The portion of this finding reading "and did mark the exterior corners of Section 36 in said Township 58, but that no survey was made at that time which subdivided said township into sub-sections" is objected to as ambiguous, redundant and confusing, and not supported by the evidence.

Finding 10.—The exceptions and objections are noted *infra*, p. 10 in connection with the accounting issue.

Finding 11.—The portion of this finding reciting "a survey of Section 36" is objectionable on the ground that it is clearly erroneous since there is no evidence to support it. To conform to the evidence the finding should be modified to read as follows:

> That a survey subdividing said Township 58 into sections, including Section 36, was authorized on July 14, 1914, and was accepted by the Commissioner of the General Land Office on July 27, 1916.

Finding 12.—In so far as this finding refers to a "survey of Section 36" or to the withdrawal of "Section 36" it is objectionable on the ground that it is clearly erroneous since there is no evi-

dence to support it. To conform to the evidence the finding should be modified to read as follows:

> That on December 6, 1915, about seven months before the acceptance of the survey subdividing said Township 58 into sections, including Section 36, the President, under authority of the Act of June 25, 1910, c. 421, 36 Stat. 847, withdrew from location, settlement, sale, or entry, all of the future Section 36 in said township for classification and in aid of legislation and placed the future section along with other lands in Petroleum Reserve No. 41.

THE FINDINGS RELATING TO THE ACCOUNTING ISSUE (FINDINGS 10 AND 13)

Finding 10.—The United States excepts and objects to this entire finding on the ground that it is clearly erroneous, since there is no evidence to support it.

Finding 13.—The United States excepts and objects to this finding as follows:

(a) to the failure to find that The Ohio Oil Company's gross proceeds of $168,317.53 consisted of $167,049.54 representing the value of the oil produced and $1,267.99 representing "steam earnings";

(b) to the failure to find by months the amounts and values of the oil produced by The Ohio Oil Company from Section 36 from the beginning of production in November 1917 through December 1944;

(c) to the failure to find the facts showing and defining the separate classes of disbursements making up the total expenditures of $232,797.27, including the breakdown of capital expenditures;

(d) to the failure to find over what period of time the total expenditures were made;

(e) to the failure to find by years the amounts of royalties paid by The Ohio Oil Company to the State of Wyoming from the beginning of production in November 1917 through December 1944, and

(f) to the failure to find that wells No. 4 and 5 were "dry holes" and non-productive.

The primary ground for these exceptions and objections stems from the Special Master's failure to make findings on all essential facts concerning the accounting issue. The Special Master is free, of course, to recommend particular conclusions of law, but the Government believes it was error for him to make findings limited to those facts supporting the conclusions he recommended. The findings should cover all facts necessary to permit the plaintiff to present and the Court to consider all aspects of the law governing the measure of damages.

For example, one of the questions to be presented for the determination of the Court concerns the extent of The Ohio Oil Company's liability for the value of the production from Section 36. The Government is free to contend that as a matter of law it is entitled to a judgment for

the full value of the oil extracted by the Company without deductions of any kind. In addition, the Government is entitled to contend on the facts that if any deductions are allowed, the Company may deduct only direct operating expenses ($70,083.73) but not capital expenditures ($118,628.84), taxes ($4,317.40), or overhead ($22,461). As to capital expenditures it is entitled to argue that even if some of these expenditures are deductible the cost of "dry holes" is not deductible. As presently framed, the findings of fact do not provide a basis for argument by the Government or conclusion by the Court that some kinds of expenditures are deductible but not others since (a) those findings do not show or define the several classes of expenditures and the amount of expenditures in each class, (b) they do not show wells Nos. 4 and 5 were "dry holes", and (c) although the findings presently show that the total receipts were for the period up to December 31, 1944 they are silent as to the period covered by the expenditures.

Again, the Government has demanded the value of production with interest. The record contains the facts permitting the computation of interest from the dates of conversion figured on a monthly basis (Def. Ex. A, pp. 30–38). The record also contains the facts showing by years the amounts of royalties paid by The Ohio Oil Company to the State of Wyoming (Def. Ex. A, p. 29). Should the Court conclude that the Government is en-

titled to interest on the gross production or on the royalties alone, there is nothing in the Special Master's findings to permit computation of the amount of interest.

It is submitted that the findings should cover all essential facts so that contentions based on facts may be presented and considered and so that if the Court should adopt a measure of damages different than that recommended by the Special Master there would be findings on which to found the Court's conclusions of law. There is no conflict in the evidence as to values, or as to the dates or amounts of production, receipts or expenditures. They are correctly set forth in defendants' Exhibit A. In order that all essential facts may be contained in the findings, the following is proposed in lieu of the Special Master's Finding 13:

> That the defendant, The Ohio Oil Company, has received as gross proceeds from the beginning of production in November 1917 through December 1944 from its operations on Section 36 the sum of $168,317.53, of which $167,049.54 represents the value of the oil produced and $1,267.99 represents "steam earnings." The amounts and values of the oil so produced by The Ohio Oil Company are set up by months in the defendants' Exhibit A, pp. 30–38, inclusive, and those pages are incorporated herein and made a part of this finding.
>
> During the period beginning November 1917 through December 1944, The Ohio Oil

Company has made total expenditures in the amount of $232,797.27. These expenditures are broken down as follows:

Capital	$118,628.84
Operating Expense	70,083.73
Taxes (State only)	4,317.40
Overhead	22,461.00
Royalty paid	17,306.30
	232,797.27

The capital expenditures are broken down as follows:

Total cost of Well No.	1	$16,904.22
	2	24,457.40
	3	25,738.67
	4	29,835.54
	5	48.50
Water Well No.	1	850.24
	2	2,581.55
	3	2,765.78
Lease Equipment		15,446.94
Total capital expenditures		118,628.84

Capital expenditures represent the total cost to The Ohio Oil Company of five oil wells, three water wells and operating lease equipment. Two of the oil wells (Wells Nos. 4 and 5) were "dry holes" and nonproductive.

Operating expenses represent the costs incurred by The Ohio Oil Company in its direct field operations on Section 36 for oil and gas purposes.

The expenditure for taxes includes only personal property ($1,522.89) and production taxes ($2,794.51) paid in connection with its oil and gas operations on Section 36 by The Ohio Oil Company to the State of Wyoming or its political subdivisions.

Overhead expenditures represent the portion of the fixed administrative and general expenses of The Ohio Oil Company charged

and allocated by the Company against Section 36. This charge includes a portion of the general and administrative costs of the Company's general office in Findlay, Ohio and a portion of the general and administrative costs of the Company's division office maintained in Casper, Wyoming for the entire State of Wyoming. The overhead charge includes salaries and expenses of officers and personnel, office supplies, insurance and pensions, depreciation of company-owned office buildings and office equipment in Findlay and Casper, legal services and expenses, telephone, damages and miscellaneous items. The overhead charged against Section 36 has no relation to the services furnished Section 36 direct. It is arbitrarily prorated against Section 36 on the relation the sum of the Company's capital and operating expenditures on Section 36 bear to the same expenditures in the Company's Casper division (State of Wyoming). Included in the division's expenditures is the division's pro rata share of the Company's general office overhead in Findlay, Ohio.

Royalty paid represents the sum paid by The Ohio Oil Company and received by the State of Wyoming as royalties. The amounts of royalties paid by The Ohio Oil Company to the State of Wyoming are set out by years in defendants' Exhibit A, p. 29, which page is incorporated herein and made a part of this finding.

OTHER EXCEPTIONS AND OBJECTIONS RELATING TO THE ACCOUNTING ISSUE

1. The United States excepts and objects to the failure of the Special Master to find that each of the defendants has been a wilful trespasser ever since the beginning of operations on Section 36.

2. The United States excepts and objects to the failure of the Special Master to find that each of the defendants has been a wilful trespasser since about October 12, 1929. (Consideration of such a finding would be necessary only if the Court should conclude the defendants were not wilful trespassers prior to October 12, 1929.)

3. The United States excepts and objects to the action of the Special Master in refusing to admit into evidence each of the following exhibits marked for identification and offered in evidence by the plaintiff: Exs. 49–53; 55–65; 67–70; 72–91.

The ground for the exception and objection is that the Special Master erred in ruling as a matter of law that the issue of whether the trespass was wilful was not in the case and that, therefore, the proffered exhibits were inadmissible.

EXCEPTIONS AND OBJECTIONS TO THE CONCLUSIONS OF LAW

Conclusion No. 1.—No objection or exception. (The word "defendant" on the third line should be plural.)

Conclusion No. 2.—The United States excepts and objects to this conclusion on the following grounds:

(a) it is not supported by the findings of fact;

(b) it is contrary to the law insofar as it denies the United States a judgment for money for the value of all oil produced by The Ohio Oil Company up to January 1, 1945 with interest from the respective dates of conversion computed on a monthly basis and for the amounts of "steam earnings" received by The Ohio Oil Company during the same period;

(c) it is contrary to law insofar as it denies the United States a joint and several judgment against the defendants for the amounts of royalties paid by The Ohio Oil Company to the State of Wyoming together with interest computed by years from the dates of payments;

(d) it is contrary to law insofar as it denies the United States a judgment for money for the period from January 1, 1945 to the date of the decree, unless an additional accounting for that period "discloses the value of oil extracted in excess of the costs of operation, plus the deficit in operations now existing";

(e) the whole of the last quoted portion of the conclusion in item (d), immediately above, is ambiguous in meaning and is not supported by any finding of fact showing "the deficit in operations now existing";

(f) for the purpose of accounting for the period beginning January 1, 1945, the conclusion makes controlling the date of the decree rather than the date the property is to be surrendered under the decree.

OTHER EXCEPTIONS AND OBJECTIONS RELATING TO THE CONCLUSIONS OF LAW

The United States excepts and objects to the failure of the Special Master to propose as a conclusion of law:

1. That the plaintiff is entitled to a judgment against The Ohio Oil Company for the full value of all oil produced by the Company from Section 36 from the beginning of production to the date the property is surrendered to the United States under the decree without deduction of any kind plus interest from the dates of conversion computed on a monthly basis, plus all other income received by The Ohio Oil Company from Section 36.

2. That the plaintiff is entitled to a judgment against The Ohio Oil Company for the full value of all oil produced by The Ohio Oil Company from Section 36, from the beginning of production to the date the property is surrendered to the United States under the decree deducting only direct operating expenses but not capital expenses, taxes, overhead, or royalties, adding thereto interest from the dates of conversion computed on a monthly basis, plus all other income received by

The Ohio Oil Company from Section 36. (Such a conclusion would require consideration only if judgment for the full amount, without any deductions, were not allowed.)

3. That the plaintiff is entitled to a joint and several judgment against the defendants for the full amount of the royalties on the oil extracted from Section 36 by The Ohio Oil Company from the beginning of production to the date the property is surrendered under the decree, paid by The Ohio Oil Company to the State of Wyoming, plus interest computed on an annual basis from the respective dates of payment by The Ohio Oil Company to the State of Wyoming. (So far as The Ohio Oil Company is concerned such a conclusion would require consideration only if no judgment is rendered conformable to the proposed conclusions 1 and 2 above, or if any judgment so rendered fell short of the amount of royalties paid to Wyoming. So far as Wyoming is concerned the United States is entitled to judgment for the full amount of royalties with interest even though no judgment for money is rendered against The Ohio Oil Company.)

EXCEPTIONS AND OBJECTIONS TO THE PROPOSED DECREE

The United States excepts and objects to the penultimate paragraph of the Special Master's recommended decree on the ground that it is contrary to law. See exceptions and objections to conclusion of law No. 2, and paragraphs Nos. 1,

2, and 3 under "Other exceptions and objections relating to the conclusions of law" *supra,* pp. 13–15.

The United States excepts and objects to the final paragraph of the Special Master's proposed decree on the grounds:

1. That the language concerning costs is ambiguous and confusing in that it contains apparently conflicting provisions. One provision specifies that "none of said parties shall have and recover the costs expended by it herein," while the other recites "that the additional costs incurred in this court in the trial of this cause shall be divided equally between the parties hereto."

2. That if the "additional costs" are divided in such a manner that the United States will bear any portion of the costs of either of the defendants (the Special Master suggests that the costs be equally divided three ways (Report, pp. 36–37)), then the proposed decree would allow costs against the United States and accordingly would be contrary to law.

Respectfully submitted.

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DEC 2 1946
CHARLES ELMORE CROPLEY

In the

Supreme Court of the United States

October Term, 1944

No. 10, ORIGINAL

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF WYOMING and THE OHIO OIL COMPANY,

Defendants.

OBJECTIONS AND EXCEPTIONS OF THE DEFENDANTS, STATE OF WYOMING AND THE OHIO OIL COMPANY, TO THE SPECIAL MASTER'S REPORT

In the
Supreme Court of the United States

October Term, 1944

No. 10, ORIGINAL

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF WYOMING and THE OHIO OIL COMPANY,

Defendants.

OBJECTIONS AND EXCEPTIONS OF THE DEFENDANTS, STATE OF WYOMING AND THE OHIO OIL COMPANY, TO THE SPECIAL MASTER'S REPORT

COME NOW the Defendants in the above entitled cause and object and except to the report of Nat U. Brown, Special Master herein, filed in the Office of the Clerk of this Court on the 14th day of October, 1946, in the following particulars, to-wit:

AS TO THE FINDINGS OF FACT

1. To so much of the 3rd Finding of Fact as finds generally that Plaintiff "now is the owner in fee simple of public lands in Park County, Wyoming, described as Section 36, Township 58 North of Range 100 West of the Sixth Principle Meridian", in that:

(a) Said general finding is contrary to the evidence which admittedly and conclusively supports the Special Master's Findings numbered 4, 5, 6, 7, 8 and that part of Finding No. 9 which reads: "That said Coleman Survey did not subdivide said Township 58 but did survey the

exterior lines of said township and did mark the exterior corners of Section 36 in said Township 58 * * * ."

NOTE:

Plaintiff's Exhibit	7A	(R.....)
Plaintiff's Exhibit	7B	(R.....)
Plaintiff's Exhibit	8A	(R.....)
Plaintiff's Exhibit	9	(R.....)
Plaintiff's Exhibit	10	(R.....)
Plaintiff's Exhibit	12	(R.....)
Plaintiff's Exhibit	13	(R.....)
Plaintiff's Exhibit	28	(R.....)

(b) Said general finding is contrary to the evidence in that it ignores and rejects the intent, purpose and effect of the provisions of Wyoming's school land grant, which are contained in Sections 4 and 5 of Wyoming's Enabling Act.

NOTE:

(1) Paragraphs 4 and 5 of Defendants' separate defense and Paragraph II of Plaintiff's Reply.

(2) Act of February 26, 1859 (Historical Note, 43 U.S.C.A., Section 851).

(3) Section 14 of the Wyoming Territorial Organic Act as introduced and amended with Congressional Debate which preceded said amendment and found in Volume 39, Pages 2792 to 2802, Part III, Congressional Globe, 2d Ed., 40th Congress.

(4) Sections 4 and 5 of Wyoming's Enabling Act.

2. To so much of the 9th Finding of Fact which finds that the Coleman Surveys, which were accepted and approved by the Commissioner of the General Land Office on December 20, 1892, did not identify or make susceptible of

identification Section 36 of said Township 58, as being contrary to the pleadings and the evidence in that the pleadings and the evidence establish without conflict or contradiction that said accepted and approved Coleman Surveys as to fractional Township 58 North, Range 100 West, established and fixed the exterior lines or boundaries of said fractional township and also established and fixed the corner and quarter corner monuments on said exterior boundaries or lines of said Township 58, and also established and fixed the southeast corner of said Section 36, Township 58, and the quarter section point to the north and the northeast corner, and also fixed and established westerly from the southeast corner the quarter corner and the southwest corner.

NOTE:

(1) Paragraphs 5, 6, 7, and 8 of Defendants' Answer and Plaintiff's reply to said paragraphs which are found in Paragraphs V, VI, VII and VIII of Plaintiff's Reply.

(2) Plaintiff's Exhibits 9, 10, 12, 13 and 28.

(3) Master's detailed discussion and analysis of this evidence appearing on pages 14 and 15 of The Master's Report.

3. To the 12th Finding of Fact, insofar as it may be considered as finding that Section 36 was on December 6, 1915, subject to withdrawal under the Act of June 25, 1910, 36 Stat. 847 (43 U.S.C.A., Section 141), and that its inclusion in Petroleum Reserve Number 41 was valid on the ground that such finding, if so construed, is contrary to the facts established by the pleadings and the record which disclose that long prior to said purported withdrawal of Section 36, Wyoming had acquired a vested equitable right, title or interest therein.

4. For the failure of The Master to find that it was the intent and purpose of Section 14 of the Wyoming Territorial Organic Act that the then unsurveyed Sections 16 and 36 of each township of said territory were thereby withdrawn from the public lands of the United States and should not thereafter be subject to preemption or homestead entry or disposal under other Federal law, but were thereby appropriated and reserved to the fulfillment of the pledge thereof to the incipient State of Wyoming for school purposes.

NOTE:

(1) Section 14 of said Organic Act as introduced.

(2) The proposed amendment thereof by striking out all matter therein relating to survey and the debate on such proposed amendment (Vol. 39, pp. 2792 to 2802, Part III, Congressional Globe, 2nd Edition, 40th Congress).

(3) Section 14 of said Organic Act, as enacted after the adoption of said proposed amendment.

(4) The enacting clause of the Preamble to Wyoming's Enabling Act.

(5) Article 18, Section 1 of the Constitution of the State of Wyoming and "Journals and Debates of the Constitutional Convention of Wyoming" at Pages 753 to 758.

5. For the failure of The Master to find that it was the intent and purpose of Congress, expressed through Sections 4 and 5 of Wyoming's Enabling Act, strictly to carry into effect the school land pledge and obligation of the United States contained in said Organic Act and that such intention was evidenced by the inclusion in Section 5 of said Enabling Act of the following: "and such land shall not be subject to preemption, homestead entry or any other

entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

NOTE:

(1) Legislative history of Section 14 of Wyoming's Organic Act and Article 18, Section 1 of the Constitution of Wyoming and the "Journals and Debates of the Constitutional Convention of Wyoming" and the enacting clause of Wyoming's Enabling Act in which its constitution was accepted, ratified and confirmed, all as above referred to.

6. For the failure of The Master to find that Congress, by the above quoted portion of Section 5 of Wyoming's Enabling Act, intended to and did on July 10, 1890, set apart, appropriate and reserve on behalf of Wyoming for school purposes only, all unsurveyed Sections 16 and 36, not theretofore disposed of, in every township of the State.

7. For the failure of The Master to find from the pleadings and the evidence that the Section 36 in question was not, on December 6, 1915, a part of the public lands of the United States subject to disposal under the land laws of the United States by withdrawal for classification or in aid of legislation or for any other purpose which might prevent Wyoming from ultimately acquiring legal title thereto for the purpose of the reservation thereof on its behalf contained in Wyoming's compact with the United States of July 10, 1890.

8. For the failure of The Master to find from the pleadings and the evidence that the approval by the Commissioner of the General Land Office of the Coleman Survey of the exterior boundaries of said Township 58 created and

established said Township 58 as a congressional township with fixed and established boundaries.

NOTE:

(1) Excerpt from Plaintiff's "Motion for Leave to File Complaint" and "Complaint", appearing on Page 3 thereof, reading as follows:

> "While Section 36 was not surveyed until 1916, the township in which it lies was surveyed prior to that date. The north line of the township is a part of the Montana-Wyoming state line surveyed in 1880. The east, south, and west boundaries of the township were run in 1892 and the survey was accepted by the Commissioner of the General Land Office on December 20, 1892."

(2) Paragraphs 6, 7 and 8 of Defendants' first and separate defense and Paragraphs VI, VII and VIII of Plaintiff's Reply.

(3) Plaintiff's Exhibits 9, 10, 12, 13 and 28, supra.

9. For the failure of The Master to find from the pleadings and the evidence that the approved Coleman Survey of the exterior boundaries of Township 58 established the existence of said Section 36 within said Township, and established the exterior corners of said Section 36 and identified said Section 36 or made the same susceptible of identification.

10. For the failure of The Master to find from the pleadings and the evidence that upon the approval by the Commissioner of the General Land Office on December 20, 1892, of the Coleman Survey of the exterior boundaries of Township 58, the said Section 36 involved herein was, in any event, by reason of the provisions of Section 5, of Wyo-

ming's Enabling Act, set apart, appropriated and reserved on behalf of the State of Wyoming for school purposes only.

11. For the failure of the The Master to find specially and with particularity from the pleadings and the evidence that a United States survey of the exterior boundaries of Township 58 North of Range 100 West of the Sixth Principal Meridian was approved by the Commissioner of the General Land Office on the 20th day of December, 1892.

12. For the failure of The Master to find from the trial record and pleadings that the said Section 36 involved herein was not known mineral land on or prior to July 10, 1890, the date upon which Wyoming's Enabling Act became effective.

NOTE:

(1) Statement in Plaintiff's "Motion for Leave to File Complaint" and "Complaint" on pages 3 and 4 that "known mineral character of the land would probably become an issue in the case."

(2) Paragraph I of Plaintiff's "further reply" on Page 5 of Plaintiff's Reply where said issue is tendered.

(3) Record Page ..... where Plaintiff refused to offer evidence in support of said tendered issue.

13. For the failure of The Master to find from the pleadings and trial record that said Section 36 was not, in any event, known mineral land on or prior to December 20, 1892, the date upon which the Coleman Survey of the exterior boundaries of said Township 58 was approved by the Commissioner of the General Land Office.

NOTE:

(1) See note to Objection 12.

14. For the failure of The Master to find from the pleadings and the evidence:

(a) That the State of Wyoming has been the owner of an equitable right, title or interest in and to said Section 36 since July 10, 1890, superior to any right, title, claim or interest of the United States;

(b) Or that in any event Wyoming has been the owner of such equitable right, title or interest in and to said Section 36 since December 20, 1892.

15. For the failure of The Master to find from the pleadings and the evidence that Wyoming is now and at all times since July 27, 1916, the date of the acceptance or approval by the Commissioner of the General Land Office of the subdivisional survey of said Township 58, has been the owner in fee simple of said Section 36, Township 58 North of Range 100 West of the Sixth Principal Meridian, with relation back to July 10, 1890, or in any event to December 20, 1892.

AS TO THE CONCLUSIONS OF LAW

1. That the Master erred in his first conclusion of Law in that:

(a) Findings of Fact made by The Master required a general conclusion of law as to title in favor of the Defendant, State of Wyoming.

(b) The Findings of Fact which The Master should have made as hereinbefore specified and which he failed to make, required a general conclusion of law as to title in favor of Defendant, State of Wyoming.

2. That The Master erred in not concluding that Section 14 of the Wyoming Territorial Organic Act withdrew, set apart, appropriated and reserved on behalf of the incipient State of Wyoming for school purposes only all Sections 16 and 36, not then otherwise disposed of, whether surveyed or unsurveyed, of every township in the territory.

3. That The Master erred in not concluding that the provisions of Section 4 and 5 of Wyoming's Enabling Act carried into effect the promise or pledge of said lands, surveyed or unsurveyed, made by the school land reservation of said Organic Act.

4. That The Master erred in not concluding that Sections 4 and 5 of Wyoming's Enabling Act constituted a contractual or compact agreement by the United States with the State of Wyoming by reason of which the unsurveyed Sections 16 and 36, not then otherwise disposed of, in every township of the State were withdrawn, set apart, appropriated and reserved on behalf of the State of Wyoming for school purposes only.

5. That The Master erred in not concluding that by reason of said compact provisions above referred to, the State of Wyoming was granted in praesenti, on July 10, 1890, the date of said compact, an equitable right, title or interest in and to said unsurveyed Sections 16 and 36 of such a nature or character that the State of Wyoming thereupon became entitled ultimately to acquire legal title to said lands upon the formal determination of the interior lines of Section 36 in question in a strictly legal sense by an approved United States subdivisional survey thereof and that pending the ripening of said equitable right, title or interest into legal title, the said lands were not a part of the "public lands" of the United States subject to disposition under the land laws of the United States.

6. That The Master erred in not concluding that on December 6, 1915, the unsurveyed Section 36 herein involved was not part of the public lands of the United States subject to withdrawal or other disposal under 43 U.S.C.A., Section 141, because said land had been theretofore (on July 10, 1890, or in any event, on December 20, 1892,) reserved by Congress on behalf of Wyoming for school purposes only.

7. That The Master erred in not concluding that in any event Wyoming's equitable right, title or interest in and to said Section 36 attached when said land became, in equity, identified or susceptible of identification by reason of the approval by the Commissioner of the General Land Office on December 20, 1892, of the survey of the exterior boundaries or lines of said Township 58.

8. That The Master erred in not concluding that in any event said Section 36, from the said date of the approval of the survey of the exterior boundaries of said

Township 58, was set apart, appropriated and reserved on behalf of Wyoming for school purposes only.

9. That The Master erred in not concluding that said Section 36 was not "known mineral land" on or prior to July 10, 1890, or in any event that said Section 36 was not "known mineral land" on or before December 20, 1892.

10. That The Master erred in not concluding that the Plaintiff was and is estopped as against the sovereign State of Wyoming from asserting title to said Section 36.

11. That The Master erred in not concluding that Wyoming's equitable right, title or interest in and to said Section 36 ripened into legal title to said lands upon the acceptance by the Commissioner of the General Land Office on July 27, 1916, of a subdivisional survey of said Township 58 with relation back to July 10, 1890.

12. That The Master erred in not concluding that Defendant, State of Wyoming, is entitled to a decree quieting title in it to said Section 36 and adjudging that the Plaintiff has no right, title or interest in and to said land or any part thereof, and perpetually enjoining the Plaintiff from asserting any right, title or interest in and to said lands or any part thereof.

AS TO THE MASTER'S PROPOSED DECREE

Defendants object and except to The Master's proposed decree and to the failure of The Master to propose and recommend a decree in favor of the Defendant, State of Wyoming, upon the title issue and generally in favor of Defendants and dismissing Plaintiff's complaint for want of equity.

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No. 10, Original

In the Supreme Court of the United States

OCTOBER TERM, 1946

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF WYOMING AND THE OHIO OIL COMPANY,
DEFENDANTS

BRIEF FOR THE UNITED STATES

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Exception (f) to	Finding 13	stated—R. 465	withdrawn—Br. p. 42
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Exception (b) to	Conclusion 2	stated—R. 469	covered by Point II of Argument, Br. pp. 41–61
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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 10, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF WYOMING AND THE OHIO OIL COMPANY, DEFENDANTS

BRIEF FOR THE UNITED STATES

JURISDICTION

This is an action brought by the United States against the State of Wyoming and The Ohio Oil Company pursuant to leave granted by the Court on October 9, 1944 (323 U. S. 669). The original jurisdiction of the Court is invoked under Article III, Sec. 2, cl. 2, of the Constitution, and Section 233 of the Judicial Code (28 U. S. C. 341).

QUESTIONS PRESENTED

1. Whether under the grant of school lands contained in the Wyoming Enabling Act of 1890, a survey in 1892 of the exterior bounds of a town-

ship is sufficient to divest the United States of title to the future section 36 in that township.

2. Whether the United States is entitled to recover the full value of the oil extracted from section 36 by The Ohio Oil Company from the beginning of production and all income derived from the section by the Company, where it is pleaded and proved that the defendants are trespassers and there is no evidence to show the trespass was innocent.

3. Whether the United States is entitled to a joint and several judgment against both defendants for the moneys paid by The Ohio Oil Company and received by the State of Wyoming as royalties on the oil extracted from section 36 since the beginning of production.

4. Whether the United States is liable for costs incurred by either of the defendants.

5. Whether, if the plaintiff prevails, the date of the judgment or the date the property is surrendered, should control the termination of any supplemental period of accounting allowed after the entry of judgment.

STATUTES INVOLVED

Section 6 of the Act of August 9, 1888, c. 819, 25 Stat. 393; Enabling Act of July 10, 1890, c. 664, 26 Stat. 222, and the Act of February 28, 1891, c. 384, 26 Stat. 796. (See Appendix, pp. 66–76.)

STATEMENT

This is an action to quiet in the United States the title to 640 acres of public land in Wyoming contained in a section 36, and to recover the full value of the oil extracted from the land. The State of Wyoming claims under a land grant from the United States set out in the enabling act admitting the State into the Union. The other defendant, The Ohio Oil Company, claims as lessee from Wyoming. It is the Government's position, adopted by the Special Master, that title to the section never vested in Wyoming under the grant, since the land was reserved for federal public use before the section was created by an approved survey of its lines.

The case splits into two main issues: the title question—whether the United States is the owner of the section 36 in controversy; the accounting question—whether the United States is entitled to recover the value of the oil extracted by the defendants from section 36 and, if so, the measure of damages to be applied. The Special Master held in favor of the United States on the title issue and in favor of the defendants on the accounting issue. The case is now before the Court on the exceptions and objections of the parties to the Special Master's report.

The title issue (Objections to findings 4–7, 9, 11, 12)[1].—Wyoming was organized as a territory by the Organic Act of July 25, 1868, c. 235, 15 Stat. 178. It was admitted into the Union under the Enabling Act of July 10, 1890, c. 664, 26 Stat. 222. Section 4 of the Enabling Act granted "for the support of common schools," "sections numbered sixteen and thirty-six in every township of said proposed State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, * * *" (Appendix, p. 68.) Also, section 4 assimilated the provisions of section 6 of the Act of August 9, 1888, c. 819, 25 Stat. 393, thus empowering Wyoming to select lieu lands where it was found upon survey that sections 16 and 36 "have been or shall hereafter be reserved for public purposes." (Appendix, p. 66.) In addition by the subsequent Act of February 28, 1891, c. 384, 26 Stat. 796, Congress granted "other lands of equal acreage" to

[1] These are findings of probative or evidentiary facts intended to lead to the ultimate finding that the United States owns the land (fdg. 3, R. 457). The plaintiff's objections (R. 462–464) to these findings of evidentiary facts relate to minor factual errors and inaccuracies; the ultimate finding of title in the United States is wholly correct. Under the plan of the brief each objection is discussed in connection with the point to which it relates. A separate index of the Government's objections and exceptions follows the index to the brief.

be selected by the State when sections 16 or 36 "are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States (Appendix, pp. 72–73).

In 1892 steps were taken to procure a survey of public lands in Wyoming preliminary to fulfilling the various donations contained in the Enabling Act. The United States entered into a contract with Augustus L. Coleman to survey the exterior lines of 12 townships in Wyoming and to subdivide those townships into sections. One of the townships (township 58, range 100 west) embraced the future section 36 here in controversy. (Fdgs. 4, 5 ,6, R. 457–458.)[2] Coleman ~~Colman~~ sur-

[2] The Government's objections to findings 4, 5, 6 are directed primarily to the portions of those findings purporting to show that the survey was requested "for the purpose of identifying the sections 16 and 36 [that] were located or included in said townships" (R. 462–463). There is no evidence to support those portions of the findings. (There is no evidence whatsoever for any part of finding 4.) The supporting evidence for finding 5 (Pl. Ex. 7A, R. 188) and finding 6 (Pl. Exs. 7A, 8A, B, C, R. 188–192B) shows at most that the survey was requested to permit selection of the "lands donated to the State by the General Government * * *" (Pl. Ex. 8–C, Special Instructions to Surveyor, R. 190). The Enabling Act of 1890 (secs. 4, 6, 10, 11, Appendix, pp. 68–70) granted not only the school sections, but also 50 sections for public buildings, 90,000 acres for an agricultural college and 500,000 acres for other state institutions. The request for survey might very well have been directed to the fulfillment of those donations. The plaintiff recognizes that its objections on this point are of relatively small importance since the reason for the request for survey, even if it were material and had been accurately re-

veyed the exterior bounds of township 58–100 but did not subdivide that township (fdg. 9, R. 459).[3] The survey was duly inspected by the

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cited by the Special Master in his findings, cannot affect the finding of the ultimate fact of ownership in the United States.

In addition, as to Finding 6, the United States objected to the failure of the Special Master to find the facts as set out in Paragraph V of the Government's reply (R. 462–463, 12). The defendants in open court admitted the allegations of Paragraph V of the reply (R. 60) and the Special Master announced in open court he would find the facts as admitted (R. 60–61). Instead he found the facts substantially word for word as pleaded in the answer (Fdg. 6, R. 458). The report contains no explanation of this reversal and the plaintiff is aware of no justification for rejecting the defendants' admission and renouncing the ruling made in open court.

[3] Finding 9 recited the Coleman survey "did not subdivide" Township 58–100 "nor did the survey so identify or establish said section [36] as to identify or make susceptible of identification Section 36." This is correct. (See *infra*, pp. 21–35.) Defendants concede that Coleman did not subdivide the township (R. 8, 73).

However, finding 9 also recites that the Coleman survey "did mark the exterior corners of Section 36 in said Township 58, but that no survey was made at that time which subdivided said township into sub-sections." Plaintiff objected to this portion of the finding (R. 464). Confessedly a part of the objectionable language follows the phraseology of Paragraph VIII of the Government's reply (R. 13). Nevertheless, since it does not conform to the evidence it should not be incorporated in the findings. Having found in accord with the evidence that the township was not subdivided and that the survey did not identify or establish section 36, it is redundant, ambiguous and confusing to speak of the exterior corners of a non-existent section 36 or to speak of subdividing into "subsections" a township which was correctly found not to be subdivided at all. Accordingly, it is submitted that the objectionable portion of finding 9 should be stricken as requested in plaintiff's objection to the finding (R. 464). (See *infra*, pp. 21–30.)

Surveyor General for Wyoming who made the return to the Commissioner of the General Land Office. The survey was officially approved by the Commissioner on December 20, 1892. (Fdgs. 7, 8, R. 458–459.)[4]

It was not until sometime after 1914 that township 58–100 was subdivided into sections. The survey was officially approved on July 27, 1916, but seven months earlier the President had withdrawn the future section 36 in the township, along with other land, and placed it in Petroleum Reserve No. 41 (fdgs. 11, 12, R. 459).[5]

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[4] The plaintiff's objections 1 and 2 to finding 7 (R. 463) are withdrawn. Objection 3 (R. 463–464) dealing with the Special Master's refusal to admit certain exhibits in evidence is discussed *infra*, p. 24, fn. 12. There was no objection to finding 8.

[5] The Government's objections to findings 11 and 12 are directed mainly at the use of phraseology carrying the implication that the 1916 survey was a survey subdividing an existing section 36 into quarter-sections and not a survey subdividing township 58–100 into sections and quarter-sections (R. 464). It is quite clear from the Special Master's discussion on the point (Report, R. 443) that he recognized the 1916 survey to be a survey subdividing township 58–100 into sections. The use of the phrase "a survey of Section 36" in findings 11 and 12 no doubt was intended to mean a survey of the exterior lines of section 36, not a survey subdividing an existing section 36 into quarter-sections. The objectionable language apparently was lifted from the Government's reply (R. 14). Nevertheless, it is not in accord with the evidence consisting of the entire history of the 1916 survey (Pl. Exs. 33–37, 40–45, 47, 48, R. 240–246A, 249–302A, 303, 304–305), including (a) the field notes of the resurvey of the four exterior lines of township 58 and of the division of the township into sections and quarter-sections

The accounting issue.—In 1917, the Ohio Oil Company went upon the land and commenced operations (Report, R. 455). Five oil wells and three water wells were drilled (Def. Ex. A, R. 383; Report, R. 452). From the beginning of production through December 31, 1944, the Company's total earnings derived from section 36 were $168,317.53, of which $167,049.54 represents the value of 102,428.60 barrels of oil extracted from the section, and $1,267.99 represents steam earnings. The Company paid to the State $17,306.30 as royalties for the oil extracted during this period. (Def. Ex. A, R. 417; fdg. 13, R. 460.) Exclusive of royalties the Company expended through December 31, 1944 the sum of $215,490.97 in its operations on section 36, as follows: Capital expenditures, $118,628.84; operating expenses, $70,083.73; personal property and production taxes, $4,317.40; and overhead, $22,-461.00 (Def. Ex. A, R. 382; Report, R. 452).

At the hearing the Special Master directed that the case proceed on the title question separately from the accounting question. When the accounting phase of the case was reached, the Special Master refused to hear any evidence on the question of whether the defendants were innocent or wilful trespassers in connection with the issue of damages (R. 141). The United States then

(Pl. Exs. 41–44, R. 250–301), and (b) a plat of the survey of that township into sections and quarter-sections (Pl. Ex. 45, R. 302A). Findings 11 and 12 should be modified as suggested in the Government's objections (R. 464).

made an offer of proof of the defendants' knowledge of the Government's ownership, in support of the contention that the defendants were wilful trespassers (Pl. Exs. 49–91, R. 305–382). The Special Master refused to admit these exhibits into evidence (R. 144–148). The Government then rested, as did the defendants (R. 148).

On October 14, 1946 the Court received the report of the Special Master and ordered it filed. In that report the Special Master discussed the facts and applicable law relating to the title issue, concluded that the United States owned the section 36 in controversy, and made findings accordingly (Report, R. 440–448, 457–460).[6]

In his report the Special Master similarly discussed the accounting issue and reached the conclusion that the Government was entitled to recover nothing (Report, R. 449–457, 460–461). The report is silent with respect to the Government's contention that even if the defendants were innocent trespassers the United States was entitled to a joint and several judgment for the amount of royalties paid by the The Ohio Oil Company to the State. Findings 10 and 13 relate

[6] In the statement in support of its motion for leave to file the complaint, the Government explained that if the 1892 survey satisfied the requirements of the law as to identity of section 36, the Government would contend that in 1892 the land was known to be mineral and therefore title did not vest in the State (R. 2). No evidence of known mineral character was offered and the issue is not in the case.

to the accounting issue. The Government excepted to those two findings (R. 465–468), to the conclusion of law relating to the accounting issue, and to the concomitant section of the proposed decree (R. 469, 471). The Government also excepted to the provisions of the proposed decree relating to costs (R. 471).

SUMMARY OF ARGUMENT

I

A. The Special Master correctly found that at all times material the United States was and now is the owner of section 36. The United States has never parted with title. The grant contained in section 4 of the Enabling Act of 1890, c. 664, 26 Stat. 222, did not vest Wyoming with title to any unsurveyed land upon admission of the State into the Union. *United States* v. *Morrison,* 240 U. S. 192, 212; *Heydenfeldt* v. *Daney Gold, etc. Co.,* 93 U. S. 634, 638 (Br. pp. 18–19 *infra*).

B. Title to a school section 36 does not vest in Wyoming under the Enabling Act of 1890 until the lines of the section are surveyed and the survey officially approved by the Commissioner of the General Land Office. *United States* v. *Morrison,* 240 U. S. 192, 210–212; *Heydenfeldt* v. *Daney Gold, etc. Co.,* 93 U. S. 634, 637–639, 640 (Br. pp. 20–21, *infra*).

C. The Special Master correctly found that the survey in 1892 of the exterior lines of township

58–100 was not a survey of the lines of the future section 36 within the township nor did it identify or establish that section or make it susceptible of identification. Under the controlling statutes (R. S. 2395–2397) and regulations (Manual of Surveying Instruction, 1890) a section is not surveyed in the field until the section lines are run and measured, the section corners marked and field notes and plats of the survey prepared. The 1892 surveyor did none of those things with respect to section 36 or any other section in township 58–100. Even if a survey of public land is physically made and field notes and plats prepared, the land remains unsurveyed until the survey is accepted by the Commissioner of the General Land Office. A government survey "creates"; it does not merely "identify" a section 36. *Cox* v. *Hart,* 260 U. S. 427, 436; *United States* v. *Morrison,* 240 U. S. 192, 210. In 1892 not even the field work had been done with respect to the section 36 in controversy. The administrative decisions on the exact point sustain the Special Master's conclusion that the United States is the owner. *Barnhurst* v. *State of Utah,* 30 L. D. 314; *Harris* v. *State of Minnesota,* 1 Copp. L. L. 631 (Br. pp. 21–35, *infra*).

D. Until title passes to the State, the school section is the property of the United States and Congress may dispose of it as it sees fit. *United States* v. *Morrison,* 240 U. S. 192, 201, 205, 210,

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212; *Wisconsin* v. *Lane,* 245 U. S. 427. 433–434; *Heydenfeldt* v. *Daney Gold, etc., Co.,* 93 U. S. 634, 640. Prior to survey of the lines of section 36, the land was disposed of under authority of Congress by withdrawal into Petroleum Reserve No. 41. The land was thus "otherwise disposed of" and "reserved for public purposes" within the meaning of section 4 of the Enabling Act of 1890. It was included within a "reservation" as that word is employed in the Act of February 28, 1891, c. 384, 26 Stat. 796, applicable to Wyoming. Therefore title remained in the United States. *United States* v. *Stearns Lumber Co.,* 245 U. S. 436, 438–439; *Wisconsin* v. *Lane,* 245 U. S. 427, 434; *United States* v. *Morrison,* 240 U. S. 192; *Minnesota* v. *Hitchcock,* 185 U. S. 373; *Heydenfeldt* v. *Daney Gold, etc., Co.,* 93 U. S. 634 (Br. pp. 35–36, *infra*).

Before the Special Master the defendants argued that under section 5 of the Wyoming Enabling Act unsurveyed school lands were not subject to disposition by the United States. This contention is untenable. First, the language of section 5, on which defendants rely, in terms bars preemption and entry on unsurveyed school lands but does not prohibit withdrawals by the United States for public purposes; second, the bar against preemption and entry was in force only seven months when it was nullified by the Act of February 28, 1891, c. 384, 26 Stat. 796; third, the

Department of the Interior has consistently construed section 5 of the Wyoming Enabling Act to mean that the State acquired no rights in school lands settled under the homestead laws or otherwise disposed of prior to acceptance of the official survey. With knowledge of this administrative construction Congress reenacted the language on which the defendants rely, as a part of the Act of February 15, 1934, c. 12, 48 Stat. 350, amending section 5 of the Wyoming Enabling Act. Sen. Rept. No. 10, 73d Cong., 1st sess. (1933); H. Rept. No. 229, 73d Cong., 1st sess. (1933), pp. 3–4; and, fourth, acceptance of the defendants' argument would place Wyoming in a preferred position over its 28 sister states which have received school grants. This would be contrary to the established policy of Congress to place all school-grant states on an equal footing in these matters. It would mean that by the enabling act the United States had surrendered the freedom "to legislate touching the national domain in any way it saw fit, to promote the public interests." *Heydenfeldt* v. *Daney Gold, etc., Co.,* 93 U. S. 634, 640; *United States* v. *Morrison,* 240 U. S. 192, 200–201, 204–205. (Brief, pp. 37–40, *infra.*)

II

If The Ohio Oil Company's trespass was wilful it must pay the full value of the oil without deductions. *Wooden-ware Co.* v. *United States,* 106 U. S. 432; *Guffey* v. *Smith,* 237 U. S. 101, 118–

119; *Union Naval Stores* v. *United States,* 240 U. S. 284, 290, 292. The Special Master made no finding as to whether the Company's trespass was innocent or wilful. At the hearing he ruled that as a matter of law the issue of wilful trespass was not in the case; refused to hear evidence on the matter and sustained the defendants' objections to the Government's offer of documentary evidence to prove that the trespass was wilful (Br., pp. 41–45, *infra*).

A. The Special Master erred in ruling as a matter of law that the issue of wilful trespass was not in the case. A trespass is presumed to be wilful as a fact. *Liberty Bell Gold Mining Co.* v. *Smuggler-Union M. Co.,* 203 Fed. 795, 802, 804 (C. C. A. 8), certiorari denied, 231 U. S. 747. The Special Master's ruling was based on the plaintiff's pleadings alone. Plainly it was error to test the presence or absence of an essential issue by consideration of the pleadings of one party. When all of the pleadings are considered together there is no escape from the issue joined by the clear, repeated averments of "good faith" in the answer, which were denied in the reply. The complaint alone presents the issue of wilful trespass. It alleges the facts making the Company a trespasser and asks for relief to which the Government would be entitled only if the Company was a wilful trespasser. There was no obligation to allege bad faith or wilfulness in

terms. This would simply be pleading a conclusion of law. Implicit in the ruling of the Special Master is the suggestion that by pleading that a defendant claims possession under a lease from a co-wrongdoer the issue of wilfulness is eliminated from the case. The cases do not hold that wilfulness is excused if a trespasser claims from one who in fact is not the true owner of the land. *Union Naval Stores* v. *United States,* 240 U. S. 284 ;*Guffey* v. *Smith,* 237 U. S. 101 (Brief, pp. 45–51, *infra*).

B. On the record The Ohio Oil Company is liable as a wilful trespasser. The evidence to establish good faith resides with the defendants. They offered no evidence on the issue. Thus the record is blank as to why Wyoming issued leases both before and after the land was surveyed, and before and after it was made a part of a federal petroleum reserve. Similarly, there is nothing in the record to show why the Company exploited Government land which was part of a petroleum reserve. If the Company failed intentionally or negligently to ascertain who owned the land, the wilful character of its trespass cannot be excused. *Eppenauer* v. *Ohio Oil Co.,* 128 F. 2d 363, 364–365 (C. C. A. 5), certiorari denied, 306 U. S. 632. If it trespassed or continued to trespass knowing the United States was the owner it is liable as a wilful trespasser. *Guffey* v. *Smith,* 237 U. S. 101; *Union Naval Stores* v. *United States,* 240 U. S. 284.

After 1929 there is positive proof that the Company knew that the United States, not Wyoming, owned the land. The documents offered by the Government show that in 1929, upon inquiry, the United States informed Wyoming that the State had no title. A responsible officer of the Company checked the facts and submitted a detailed title opinion concluding that the State had no title. This, too, was the view of the Commissioner of Public Lands for Wyoming. The documents show affirmatively that since October 12, 1929, the defendants knew of the Government's claim of ownership and since January 1930 they knew that the Government owned the land (Brief, pp. 52–57, *infra*).

C. The cases on which the Special Master relies do not support his opinion that the trespass was innocent. *Gulf Refining Co.* v. *United States,* 269 U. S. 125, and *Martel* v. *Hall Oil Co.,* 36 Wyo. 166, discussed (Brief, pp. 57–61, *infra*).

III

The United States is entitled to a joint and several judgment against the defendants for the amount of royalties paid by the Company to Wyoming plus interest. *Mason* v. *United States,* 260 U. S. 545, 559–560 (Brief, pp. 62–63, *infra*).

IV

The provisions of the proposed decree concerning costs are ambiguous and may subject the

United States to the payment of a portion of the defendants' costs. The United States is not liable for costs (Brief, pp. 63–64, *infra*).

V

The date that the property is surrendered, not the date of the decree, should control the end of the period of accounting after judgment (Brief, pp. 64–65, *infra*).

ARGUMENT

I

THE UNITED STATES IS THE OWNER OF SECTION 36

The United States has never parted with the title to section 36. It is the Government's position (1) that the grant of school sections in section 4 of the Wyoming Enabling Act of 1890 did not vest Wyoming with title to any unsurveyed land upon admission of the new State; (2) that title does not pass until the lines of the future section are surveyed in the field and the survey officially approved and accepted by the Commissioner of the General Land Office; (3) that the survey made in 1892 was merely a survey of the exterior lines of township 58–100 and was not a survey of the lines of the future section 36 nor did it identify or make susceptible of identification the future section 36; and (4) that a survey of the lines of the future section 36 authorized in 1914 was not accepted by the Commissioner of

the General Land Office until July 27, 1916. Seven months before the 1916 survey, and while the land was unsurveyed, it was withdrawn as a part of a petroleum reserve, thus removing it from the operation of the grant contained in section 4 of the enabling act.

A. THE GRANT OF SCHOOL SECTIONS CONTAINED IN SECTION 4 OF THE ENABLING ACT OF 1890 DID NOT OPERATE TO VEST WYOMING WITH TITLE TO UNSURVEYED SCHOOL LAND UPON ADMISSION OF THE STATE INTO THE UNION

The law is clear that title to unsurveyed school lands does not pass upon admission of the new State. *United States* v. *Morrison,* 240 U. S. 192, 212; *Heydenfeldt* v. *Daney Gold, etc. Co.,* 93 U. S. 634, 638. Also see *Wisconsin* v. *Lane,* 245 U. S. 427, 432; *Hedrick* v. *Hughes,* 15 Wall. 123, 129. Cf. *Sherman* v. *Buick,* 93 U. S. 209, 214. If Congress had intended that title pass upon admission, there would have been no occasion for authorizing Wyoming to select lieu lands where the school sections "have been or shall hereafter be reserved for public purposes."[1] *Heydenfeldt* v. *Daney Gold, etc. Co.,* 93 U. S. 634. By the Enabling Act of 1890 Congress merely granted a quantity of land equal in amount to the sections 16 and 36 in the proposed township (id. pages 638–640). Congress did not guarantee that a sec-

[1] The quoted language is found in section 6 of the Act of August 9, 1888, c. 819, 25 Stat. 393, assimilated into the Wyoming Enabling Act by section 4 of that act (Appendix, pp. 66–68).

tion 16 or 36 would exist in each township but only that on the acceptance of the survey defining the school section, title would pass to the State provided there had been no prior disposition of the land. As this Court pointed out in *United States* v. *Morrison,* 240 U. S. 192, 200–201:

> * * * It must have been manifest to Congress, executing this definite policy with respect to the vast area of the public lands, that not improbably a long period would elapse in the case of numerous townships before surveys would be completed. Not only was it inevitable that upon survey there would be found to be fractional townships in which there would be either no section sixteen, or thirty-six, or only a portion of one or the other, but in various instances there might be prior claims, or actual settlements, or it might appear before surveys were had that there were important public interests which in the judgment of Congress should be subserved by some other disposition of lands of a particular character. On the other hand, it was not important to the State that it should receive specific lands, if suitable indemnity were given.

See also *United States* v. *Stearns Lumber Co.,* 245 U. S. 436, 439; *Wisconsin* v. *Lane,* 245 U. S. 427, 433–434; *Minnesota* v. *Hitchcock,* 185 U. S. 373, 400–401.

B. TITLE TO A SCHOOL SECTION 36 DOES NOT VEST UNDER THE WYOMING ENABLING ACT OF 1890 UNTIL AN OFFICIAL SURVEY OF THE LINES OF THE SECTION IS APPROVED BY THE COMMISSIONER OF THE GENERAL LAND OFFICE

Until the lines of a school section are surveyed and the survey officially approved the land remains the property of the United States. *United States* v. *Morrison,* 240 U. S. 192, 210–212; *Heydenfeldt* v. *Daney Gold, etc. Co.,* 93 U. S. 634, 637–639, 640; *United States* v. *Ickes,* 72 F. 2d 71, 75 (App. D. C.); *State of Utah,* 53 I. D. 365, 368; *State of New Mexico,* 52 L. D. 679, 680; *F. A. Hyde & Co.,* 37 L. D. 164; see also *Cox* v. *Hart,* 260 U. S. 427, 436; *Wyoming* v. *United States,* 255 U. S. 489, 500; *Gaines* v. *Nicholson,* 9 How. 356, 364–365; *F. A. Hyde and Company,* 48 L. D. 132, 133–134.

The lines of the section 36 in controversy were not surveyed in 1892 and approval of the 1892 survey of the exterior lines of the township could not constitute approval of a non-existent survey of the lines of the section within the township. The Special Master found (fdg. 9, R. 459) and the defendants concede (R. 8, 73) that in 1892 township 58–100, in which the controverted land lies, had not been subdivided into sections and that the lines of section 36 were not officially surveyed until 1916, subsequent to the withdrawal of the land for a petroleum reserve (fdgs. 11, 12, R. 459). In 1892 only the east, south and west exterior lines of what is now township 58–100

were surveyed.[8] But the defendants argued to the Special Master that the 1892 survey of the exterior township lines "was sufficient in equity to identify or make susceptible of identification Section 36 * * *." (Report, R. 442.) From this stems their contention that upon approval of the 1892 survey "Section 36 was withdrawn and set apart from the public lands of the United States and was irrevocably appropriated to the Wyoming school grant," and therefore the 1915 withdrawal order was ineffective as to section 36 (Report, R. 442). The Special Master, however, found that the 1892 survey did not "so identify or establish said section as to identify or make susceptible of identification Section 36" (fdg. 9, R. 459) and found the United States to be the owner of the land (fdg. 3, R. 457). Those findings are fully supported by the record.

C. THE 1892 SURVEY OF THE EXTERIOR LINES OF TOWNSHIP 58–100 WAS NOT A SURVEY OF THE LINES OF THE FUTURE SECTION 36 IN THE TOWNSHIP, NOR DID IT IDENTIFY THE FUTURE SECTION 36

1. *The 1892 survey did not establish or identify any of the lines or corners of the future section 36.*—The defendants' contention that the 1892 survey of the exterior lines of township 58–100 sufficed to identify section 36 is pitched on the proposition that the initial mile of the south and

[8] The north line of the township is a part of the boundary between Wyoming and Montana, which had been previously surveyed in 1880 (Pl. Ex. 14 for iden., R. 216).

east exterior boundaries of the township constitute the south and east lines of the future section 36.[9] That proposition is in conflict with the statutes and regulations governing surveys of public land. It is directly contrary to the decisions of this Court and of the Department of the Interior.

a. *Under the statutes governing surveys of public lands a section is not surveyed in the field until the section lines are run and measured and the section corners marked.*—This is plainly spelled out by the laws in force at the time of the 1892 survey (R. S. 2395–2397, now codified as 43 U. S. C. 751–753). Section 2395 contains eight numbered subsections of which the first three are of primary pertinence here.[10] The first provides for dividing public lands into townships six miles square. The second directs that the corners of townships must be marked and each distance of a mile between such corners also must be marked. The third provides for the subdivision of the township into 36 sections each containing about 640 acres. So far as township 58–100 is concerned, the 1892 survey never passed beyond the second subsection of R. S. 2395. No attempt was made to fulfill the requirements of the third subsection of

[9] The defendants do not account for the north and west lines of the future section 36.

[10] For full text of pertinent portions of R. S. 2395, see Appendix, pp. 74–76.

2395. Township 58–100 was not subdivided in 1892.

b. *Under the regulations governing surveys of public lands in 1892 a section is not surveyed in the field until the section lines are run and measured and the section corners marked and field notes and plats of the survey prepared.*—What was done by Coleman, the 1892 surveyor, did not constitute a survey of any of the lines of section 36. This becomes apparent from an examination of the regulations which controlled his contract and which he was obligated by law to follow.[11] Thus the provisions of the 1890 Manual required that each line of each section be run, measured and marked; that section corners be marked; that detailed field notes of the work be prepared and that plats of the survey drawn to a specified scale be prepared in triplicate. (Manual, pp. 37–40, 41–49; Appendix, pp. 77–80, 81–82.) What Coleman did was to survey three of the exterior lines of township 58–100. He did nothing more with respect to that township. Accordingly, there was no occasion for him to prepare field notes or plats

[11] The regulations governing the survey under Coleman's contract are contained in the Manual of Surveying Instructions (1890)—legally the Manual of December 2, 1889, which by statute and in terms was a part of Coleman's contract. Act of October 1, 1890, c. 1262, 26 Stat. 650 (R. 188B). Pertinent portions of the 1890 Manual are printed in the Appendix, pp. 76–82.

of a survey subdividing township 58–100 and none was prepared.[12]

In the absence of field notes or a plat of such a survey there was nothing for the Commissioner to examine or act upon in 1892. And, of course,

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[12] Coleman's contract covered 12 townships. One of these was township 58–100. Coleman subdivided or sectionalized 10 townships and a little over one-half of the eleventh. For each of these eleven townships he prepared a plat on a scale of 40 chains to one inch as required by the 1890 Manual, p. 49 (Appendix, p. 82). These were a part of the return on his survey (Pl. Exs. 16–26, R. 223–233). The entire return and related papers consisting of 19 exhibits were offered in evidence in support of the allegations of Paragraph VI of the reply (Exs. 9–27, R. 193–234). Of these 19 exhibits, 11 were refused admission into evidence (R. 64–71) when the defendants objected on the ground that under the pleadings the "proposed exhibit and any of its material contents is admitted" (R. 64, 66). In sustaining the objection to each of the eleven exhibits, the Special Master ruled there was no issue on the allegations of Paragraph VI of the reply (R. 66). He previously had stated that in view of the defendants' admission he would find "those [Par. VI of the reply] to be the facts; so it is not necessary to have proof on that" (R. 61). However, despite his declaration in open court, the Special Master found the facts not as pleaded in the reply but as pleaded in Paragraph VI (R. 8) of the defendants' answer. The Government believes the exhibits should be treated as if they were in evidence in view of the Special Master's failure to abide by his declaration in open court to find the facts as admitted by Wyoming. (See Objection 3 to finding 7, R. 463–464.)

The return included no plat for township 58–100 since Coleman did not subdivide township 58–100 into sections. In his discussion (Report, R. 441–442) the Special Master, referring to the 1892 survey and speaking of township 58–100, states: "The plat shows the establishment of the following parts of Section 36, the section with which we are

no such plat was filed in the district land office as required by law. R. S. 2395—8th (Appendix, pp. 75–76); *United States* v. *Morrison*, 240 U. S. 192, 210. Yet the defendants' argument before the Special Master was the equivalent of saying that even without field notes and without a plat there can be an approved official survey identifying a section within a township.

The defendants seemed to find comfort in the fact that the 1892 surveyor fixed markers at the southeast corner of the township and at the end of the initial mile north and west of that corner. But the mile markers fixed on the exterior township lines in the 1892 survey were not necessarily the section corners after subdivision of the township. In finding 9, the Special Master found that

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interested: The southeast corner thereof, the quarter section point to the north and the northeast corner thereof. Westerly from the southeast corner there was established the quarter corner and the southwest corner. However, no interior lines were established." One thing is certain, the Special Master's use of the word "plat" was inadvertent since no plat ever was prepared or submitted and accordingly none is or could be in the record (the Special Master makes no reference to any exhibit). Coleman did prepare and there was included in the return a *diagram* of township 58–100 prepared to a scale of 2 miles to one inch (Pl. Ex. 15, R. 222) as distinguished from a *plat* which is on a scale of one-half mile to an inch (Pl. Exs. 16–26, R. 223–233). A *diagram*, unlike a *plat*, does not form a basis for the disposal of public lands. It is used as an administrative aid to show the exterior lines for the information of a subdividing surveyor and to designate the length of the lines run to permit computation of the surveyor's compensation which under the contract was on a mileage basis (R. 89).

the Coleman survey did not subdivide township 58–100 or identify or establish section 36 (Report, R. 459). The finding recites, however, that Coleman "did mark the exterior corners of Section 36" and to this portion of the finding the Government objected (R. 464; see *supra*, p. 6). The instructions in the 1890 Manual, p. 37, for surveying exterior township lines directed the surveyor that "In running random [trial] lines temporary corners are to be set at each 40 and 80 chains, and permanent corners established upon the true line as corrected back * * *" (Appendix, p. 76). The Manual does not refer to them as "section corners" but simply as "corners" whereas in the instructions dealing with the subdivision of townships into sections the references are to "quarter section corners" and "section corners" (Manual, p. 38, Appendix, p. 78). The 1892 surveyors contract and instructions were to subdivide the townships and as he set markers on the 40 and 80 chain intervals on the exterior township lines he referred to them as "¼ sec. corner" and "cor. to secs.", respectively, having in mind, no doubt, the anticipated subdivision. But the statute (R. S. 2395–2d) specified that mile markers be set on the exterior township lines and the Manual makes it clear that those markers are not conclusive on the subdividing surveyor as corners of the future sections.

For example, the 1890 Manual, p. 40 (Appendix, p. 79) provided, with exceptions not here material,

that every section line running north-and-south "must be *eighty chains* in length" and "within *eighty links* of equal length." The section lines running east-and-west, with exceptions not here material, were to be within 80 links of the width established on the south boundary line of the township for that tier of sections and were to "close within fifty links north or south of the section corner."

On the basis of the 1892 survey of the exterior lines of township 58–100, how could it possibly be determined whether the east and west lines of the section (which run north-and-south) each were 80 chains in length and were within 80 links of equal length, when the west line was not even run, let alone measured; how could it be shown whether the north and south lines of the section (which run east-and-west) were within 80 links of the distance measured for the width of the tier established on the south boundary of the township, when the north line never had been run, measured or marked; how could it be determined whether the north and south lines of the section closed within 50 links of the four section corners when there were no section corners established and, treating the mile corners on the exterior township lines as section corners, there was no interior section corner or mile corner common to the future sections 25, 26, 35 and 36.

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The survey of 1892 was no more a survey of the lines of section 36 in township 58–100 than it was a survey of the lines of section 27 in the heart of that township. In the language of this Court "if title [to a school section] passes [to a state] upon survey, it must be upon a survey duly completed according to the authorized regulations of the Department." *United States* v. *Morrison,* 240 U. S. 192, 211. No sensible construction of the regulations of the Department of the Interior, as set out in the 1890 Manual, can lead to the conclusion that the 1892 survey made in accordance with instructions governing the survey of "Exteriors or Township Lines," Manual, p. 37, (Appendix, pp. 76–77) satisfied the regulations governing the subdividing of townships, Manual, pp. 37–39, (Appendix, pp. 77–79) or identified any of the lines or corners of the future section 36.

c. *That the 1892 survey did not establish or identify any of the lines or corners of the future section 36 is demonstrated by the lines and corners actually established by the 1916 survey subdividing township 58–100.* The Special Master pointed this out in his report, (R. 443).

It was not until the 1916 survey was completed that the lines and corners of section 36 were established and the section was identified. The 1916 surveyed retraced the entire east line of township 58–100. He located the monument marking the original southeast corner of the township and

the half mile and mile markers set by the 1892 surveyor (Pl. Exs. 42, 45, R. 257–259, 302A). Until the retracement actually was accomplished, however, there was no east line of the future section 36. Had he been unable to locate the original monuments, or if on retracing had he found the exterior lines were improperly run, measured or marked, a resurvey and the establishment of new corners would have been necessary. Thus on the east 2½ miles of the south line of township 58–100 the 1916 surveyor did not find the half mile and mile markers set by the 1892 surveyor. He ran new lines, measured the distances and marked quarter section and section corners. (Pl. Exs. 41, 45, R. 250–254, 302A.) In short, he made a resurvey. Until that was done in 1916 there was no southwest corner of section 36 fixed in the field and there could not be a south line of section 36.

Also, the 1916 surveyor ran, measured and marked for the first time the west line of section 36, establishing the northwest corner of the section. He ran, measured and marked the north line of section 36 and found that that line intersected the east boundary 12 links south of the mile corner fixed by Coleman in 1892 and therefore was within the allowable limits of 50 links. (Pl. Exs. 44, 45; R. 276, 302A). This mile corner then became the northeast corner of section 36. The point is that this could not be known until the subdivision took place. Upon subdivision of

the township, this corner might have been found out of limits by more than 50 links as was the case with respect to the northeast corner of section 25 (128 links) and the quarter section corner of section 24 (127 links) in the same township 58–100. In those instances, in 1916 the surveyor fixed a new section corner and a new quarter-section corner. (Pl. Exs. 42, 45; R. 260, 302A.) Had he found the northeast corner of the future section 36 similarly out of limits, a new northeast section corner would have been established. But until the section lines were actually run and measured there were no northeast, northwest, southeast or southwest section corners of section 36 within the purview of the controlling regulations.[13]

2. *A government survey "creates"; it does not merely "identify" a section 36.* We have shown that the 1892 survey of the lines of township 58–

[13] On the strength of the foregoing discussion the Government submits that its objections to findings 9, 11 and 12 (R. 464) should be sustained and those findings corrected to avoid the possible impression from finding 9 that the 1892 survey established any exterior corners of section 36, when, in fact, mile corners, not section corners, were established and to avoid the inference obviously unintended by the Special Master, which might be said to follow from the objectionable language in finding 9, 11 and 12 to the effect that the 1892 survey subdivided township 58–100 into sections but not subsections (see *supra*, pp. 6, 7, fns. 3, 5). Even if the Special Master's findings of evidentiary facts concerning title are not corrected in accordance with the Government's objections, it is clear that his finding 3, that the United States owns the land, is fully supported by the record. As a matter of fact there is no evidence to the contrary.

100 did not *in fact* identify any of the lines or corners of section 36 (pp. 21–30, *supra*). Neither did that survey identify or establish section 36 in law. The defendant's theory that a survey of the exterior lines of a township identifies section 36 is premised on an erroneous concept of the office of a government survey. A government survey "creates"; it does not merely "identify" sections of land. *Cox* v. *Hart,* 260 U. S. 427, 436; *United States* v. *Morrison,* 240 U. S. 192, 210; *Sawyer* v. *Gray,* 205 Fed. 160, 163 (W. D. Wash.); *Smith* v. *City of Los Angeles,* 158 Cal. 702; *Bullock* v. *Rouse,* 81 Cal. 590; *Powers* v. *Jackson,* 50 Cal. 429, 432; *Middleton* v. *Low,* 30 Cal. 596, 605; *Robinson* v. *Forrest,* 29 Cal. 317, 325; *Barnhurst* v. *State of Utah,* 30 L. D. 314; *Harris* v. *State of Minnesota,* 1 Copp L. L. 631.

The doctrine was clearly enunciated in *Cox* v. *Hart, supra,* where this Court stated (p. 436):

> * * * A survey of public lands does not *ascertain* boundaries; it *creates* them. *Robinson* v. *Forrest,* 29 Cal. 317, 325; *Sawyer* v. *Gray,* 205 Fed. 160, 163. Hence the running of lines in the field and the laying out and platting of townships, sections and legal subdivisions are not alone sufficient to constitute a survey. Until all conditions as to filing in the proper land office and all requirements as to approval have been complied with, the lands are to be regarded as unsurveyed and not subject to disposal as surveyed lands. *United States* v. *Morrison,*

240 U. S. 192, 210; *United States* v. *Curtner,* 38 Fed. 1, 10. It follows that although the survey may have been physically made, if it be disapproved by the duly authorized administrative officers the lands which are the subject of the survey are still to be classified as unsurveyed. In other words, to justify the application of the term "surveyed" to a body of public land something is required beyond the completion of the field work and the consequent laying out of the boundaries, and that something is the filing of the plat and the approval of the work of the surveyor.

Thus, in *United States* v. *Morrison,* 240 U. S. 192, 210, this Court held that title to a school section 16 remained in the United States where it was withdrawn for a national forest after the exterior lines of the township were run, measured and marked, the township subdivided—meaning that all lines of all sections were run, measured and marked—field notes and plats prepared evidencing the sectionalization of the township and the entire survey approved by the Surveyor General. Despite completion of the actual survey work the court held there was no official survey of the school section and title did not pass to the state. The thing lacking was the approval of the survey by the Commissioner of the General Land Office.

The Court followed the principle that there is no survey until it has been completed in accordance with the regulations of the Department of

the Interior (p. 211). In the *Morrison* case, the Commissioner's approval required by the regulations was absent. In this case there is lacking even more basic requirements imposed by the regulations, namely, the actual running, measuring and marking of the section lines and the preparation of field notes and plats. True, the Commissioner approved the 1892 survey. But in 1892 the Commissioner was acting only on what was before him. There was no evidence before him of a survey of the lines of section 36 but only of a survey of the exterior lines of a township. Approval of such a survey cannot be stretched to constitute approval of a nonexistent survey of section lines.

The administrative decisions on the exact point sustain the Special Master's conclusion that the United States is the owner. Congress has confided the execution of the laws which regulate the surveying, the selling, and the general care of the public lands of the United States to the Department of the Interior. *Knight* v. *U. S. Land Association,* 142 U. S. 161, 178; *United States* v. *Schurz,* 102 U. S. 378, 396. The decisions of that Department on those matters have been given great weight by the courts, particularly since many outstanding titles are based on those decisions. *McLaren* v. *Fleischer,* 256 U. S. 477, 481, and cases cited in footnote 2, p. 481.

Two of the several decisions of the Department of the Interior on the point are on "all fours"

with the case at bar. *Barnhurst* v. *State of Utah,* 30 L. D. 314; *Harris* v. *State of Minnesota,* 1 Copp. L. L. 631. In both cases the exterior township lines had been surveyed but the townships had not been subdivided. In both cases, after the survey of the exterior lines of the township, settlers went on what would be the eastern portions of school section 36. Thereafter, the lines of the sections 36 were surveyed. In both cases the question was whether the survey of the exterior lines of the township could be denominated a survey of the section 36 within the township so as to vest title in the State under its grant from the United States. In both cases it was held that a survey of the exterior township lines was not a survey of the future section 36 within the township and that title was in the settlers claiming from the United States and not in the State.

There is absolutely no controlling distinction between those two administrative decisions and the case under consideration. Those administrative holdings made long before this controversy arose are in conformance with the principles laid down by this Court in *Cox* v. *Hart,* 260 U. S. 427, and *United States* v. *Morrison,* 240 U. S. 192. And whenever the question has arisen the Department of the Interior consistently has adhered to the principles of these decisions. *Mahoganey No. 2 Lode Claim,* 33 L. D. 37; *State of South Dakota* v. *Trinity Gold Mining Company,* 34 L. D. 485.

It is submitted that the Special Master correctly found that the 1892 survey of the exterior lines of township 58–100 was not a survey of the lines of the future section 36 nor did it identify or establish that section or make it susceptible of identification.

D. WHILE THE LAND WAS UNSURVEYED IT WAS WITHDRAWN BY THE UNITED STATES FOR A PETROLEUM RESERVE AND THEREFORE NEVER FELL WITHIN THE OPERATION OF THE GRANT TO WYOMING

Until title does vest in a state, the school section is the property of the United States and Congress is at liberty to dispose of the land as it sees fit. *United States* v. *Morrison,* 240 U. S. 192, 201, 205, 210, 212; *Wisconsin* v. *Lane,* 245 U. S. 427, 433–434; *United States* v. *Stearns Lumber Co.,* 245 U. S. 436, 439; *Heydenfeldt* v. *Daney Gold, etc. Co.,* 93 U. S. 634, 640; *Cobban* v. *Hyde,* 212 Fed. 480 (N. D. Cal.); cf. *Minnesota* v. *Hitchcock,* 185 U. S. 373, 400; *United States* v. *Curtner,* 38 Fed. 1, 9 (N. D. Cal.), reversed on other grounds, 149 U. S. 662.

Here, prior to survey of the lines of school section 36, the land was disposed of under authority of Congress when by order of December 6, 1915, the President withdrew the land in controversy from "location, settlement, sale, or entry" and reserved it as a part of Petroleum Reserve No. 41 for classification and in aid of legislation (fdg.

12, R. 459).[14] The land thus was "otherwise disposed of" and "reserved for public purposes" within the meaning of section 4 of the Enabling Act of 1890. It was included within a "reservation" as that word is employed in the Act of February 28, 1891, c. 384, 26 Stat. 796.[15] From this it follows that the withdrawal of December 6, 1915, removed the land from the operation of the 1890 grant and title remained in the United States. *United States* v. *Stearns Lumber Co.*, 245 U. S. 436, 438–439; *Wisconsin* v. *Lane*, 245 U. S. 427, 434; *United States* v. *Morrison*, 240 U. S. 192; *Minnesota* v. *Hitchcock*, 185 U. S. 373; *Heydenfeldt* v. *Daney Gold, etc. Co.*, 93 U. S. 634; *Utah* v. *Work*, 6 F. 2d 675 (App. D. C.), affirmed, 273 U. S. 649; *United States* v. *Curtner*, 38 Fed. 1 (N. D. Cal.), reversed on other grounds, 149 U. S. 662; *State of Utah*, 53 I. D. 365; *State of Utah* v. *Lichliter*, 50 L. D. 231, 235.

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[14] The withdrawal was under authority of the Act of June 25, 1910, c. 421, 36 Stat. 847, as amended by the Act of August 24, 1912, c. 369, 37 Stat. 497, authorizing the President "at any time in his discretion, temporarily [to] withdraw from settlement, location, sale, or entry any of the public lands of the United States * * * and reserve the same for * * * classification of lands, or other public purposes to be specified in the orders of withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress."

[15] The Act of February 28, 1891, applies to Wyoming. *Wyoming* v. *United States*, 255 U. S. 489, 493. It was so held at Wyoming's own petition. *State of Wyoming*, 27 L. D. 35, 38; cf. *Johnston* v. *Morris*, 72 Fed. 890, 895–896 (C. C. A. 9).

Before the Special Master the defendants argued that under the terms of the grant to Wyoming unsurveyed school lands were not subject to disposition by the United States.[16] The defendants pointed to section 5 of the enabling act as demonstrating an intention to reserve unsurveyed school land to the State. Section 5 provides (Appendix, p. 68) that land "granted for educational purposes" "shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

The short answer to this argument is that the prohibition of the quoted language in terms is limited to preemption and entry. It is no bar to withdrawals by the United States for public

[16] The defendants also relied on the Organic Act of July 25, 1868, sec. 14, c. 235, 15 Stat. 178, 183, organizing the Territory of Wyoming as conferring on the future state title to the school sections. Of course if title did not vest upon admission of the State into the Union, it could not vest under the organic act. While Wyoming was a Territory, all public lands within it were the property of the United States. *Irvine* v. *Marshall*, 20 How. 558, 561–562. During the entire life of the organic act, unsurveyed school lands were subject to preemption and entry as well as to disposition under the land laws of the United States. The organic act was not a grant. *Union Pac. Ry. Co.* v. *Karges*, 169 Fed. 459, 461 (C. C. Nebraska). In any event "* * * the rights of the State are to be determined by the act of admission rather than by any prior declaration by Congress of its purpose in respect to certain lands." *Minnesota* v. *Hitchcock*, 185 U. S. 373, 391.

purposes. In any event this provision was in force only seven months when it was nullified by the Act of February 28, 1891, c. 384, 26 Stat. 796, which granted the State "other lands of equal acreage" "where settlements with a view to preemption or homestead have been, or shall hereafter be made, before the survey of the lands in the field, which are found to have been made on sections sixteen or thirty-six" (Appendix, p. 72). At Wyoming's own petition the 1891 Act was held applicable to it (see fn. 15, p. 36, *supra*).

Finally, the very language of section 5 on which Wyoming relies was reconsidered by Congress when it had before it the bill eventually enacted as the Act of February 15, 1934, c. 12, 48 Stat. 350, amending section 5 of the Wyoming Enabling Act. The Committee on Territories of the Senate and of the House each was informed by the Secretary of the Interior that the language of section 5, here under discussion, had been consistently construed administratively to mean that the State acquired no rights in unsurveyed school lands included within a national forest, settled under the homestead laws, or otherwise disposed of through any appropriation applicable to unsurveyed lands. Sen. Rept. No. 10, 73d Cong., 1st sess. (1933); H. Rept. No. 229, 73d Cong., 1st sess. (1933) pp. 3–4. With this full understanding of the administrative construction of the law, the bill was reported and the portion of sec-

tion 5 on which defendants rely was reenacted. The reenactment is a clear congressional recognition and approval of the administrative construction placed upon the quoted language. *Koshland* v. *Helvering,* 298 U. S. 441, 445 and cases there cited in fn. 10; *United States* v. *Dakota-Montana Oil Co.,* 288 U. S. 459, 466; *United States* v. *Ryan,* 284 U. S. 167, 175. Cf. *Dismuke* v. *United States,* 297 U. S. 167, 174.

Acceptance of Wyoming's view would require a departure from the steadfast policy of Congress to place all of the school grant states on an equal footing with respect to the Government's right to dispose of lands granted for school purposes before approved survey of those lands. Nothing in the language or history of the Wyoming Enabling Act sustains the argument that in this matter Congress intended to place Wyoming on a preferred footing over its sister states, of which 24 had received school grants prior to Wyoming's and four subsequent to Wyoming's. Cf. *United States* v. *Morrison,* 240 U. S. 192, 205, and enabling acts cited at page 198, fn. 1.

If the defendants are correct, the United States would have been precluded from disposing of any of its public lands in Wyoming until they were segregated by survey from the granted lands. Otherwise, if before survey the United States had withdrawn public land for a military, Indian, or other public reservation, the unsurveyed school

lands within those reservations would remain the property of the State, or, if the withdrawal were construed as a taking, the State would be entitled to just compensation for those lands. Wyoming itself has never so understood its rights. Whenever the occasion has arisen Wyoming has sought and received lieu land equal in quantity to the unsurveyed school lands withdrawn into national reserves.[17] Wyoming's argument, if adopted, would mean that persons who, prior to survey, had occupied and improved land under the federal land laws, would lose their possessions and labor in case it turned out they had settled on school sections. It would mean, in the language of this Court, that by the Enabling Act the United States surrendered the freedom "to legislate touching the national domain in any way it saw fit, to promote the public interests." *Heydenfeldt* v. *Daney Gold, etc. Co.*, 93 U. S. 634, 640; *United States* v. *Morrison*, 240 U. S. 192, 200–201, 204–205.

It is submitted that the Special Master correctly found that the United States is the owner of the section 36 in controversy and correctly concluded that the Government is entitled to a decree quieting title.

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[17] *Douglas* 01043, approved March 3, 1910; *Douglas* 01209, approved March 3, 1910; Wyoming List 162, approved July 7, 1907; *Buffalo* 05068, approved December 20, 1935.

II

THE UNITED STATES IS ENTITLED TO RECOVER THE FULL VALUE OF THE OIL EXTRACTED FROM SECTION 36 BY THE OHIO OIL COMPANY FROM THE BEGINNING OF PRODUCTION AND THE FULL AMOUNT OF OTHER INCOME THE COMPANY RECEIVED FROM THE SECTION

(Plaintiff's exceptions relating to the accounting issue, R. 465–471)

It has been shown and the Special Master found that at all times material the United States owned section 36 (fdg. 3, R. 457). Accordingly, The Ohio Oil Company has been a trespasser in possession of government property during its entire period of operations. During that period, up to December 31, 1944, the Company has extracted oil valued at $167,049.54 and has received $1,267.99 in other earnings from the land. During the same period the Company paid Wyoming $17,306.36 in royalties and expended $215,490.97 in its operations on section 36, as follows: Capital expenditures, $118,628.84; operating expenses, $70,083.73; personal property and production taxes, $4,317.40; overhead, $22,461.00. (R. 417; fdg. 13, R. 460.)[18]

[18] This information is found in the statement of account placed in evidence by the defendants (Def. Ex. A, R. 417). Most of it is recited in the discussion in the Report (R. 452), but only part of it is contained in the findings. Because of the omissions the Government excepted to finding 13, dealing with the subject, and proposed a new finding stating all essential facts (R. 465–468).

If the trespass was wilful the United States is entitled to recover the full value of the oil taken by the Company without deductions of any kind. *Wooden-ware Co.* v. *United States,* 106 U. S. 432; *Guffey* v. *Smith,* 237 U. S. 101, 118–119; *Union Naval Stores* v. *United States,* 240 U. S. 284, 290, 292; see *Martel* v. *Hall Oil Co.,* 36 Wyo. 166, 178. If the trespass was not wilful the Company is entitled to deduct certain of its expenditures from the value of the oil.[19] In either event the United States is entitled to recover the royalties paid by the Company to Wyoming (see *infra,* pp. 62–63).

Whether the trespass was innocent or wilful is a question of fact extending to an essential issue in this case. As to the Company, there is no finding on this issue. As to Wyoming, finding 10 (R. 459) recites that the State "in good faith treated said [the 1892] survey as a complete sur-

[19] Before the Special Master the Government contended that even if the trespass were innocent the defendants were entitled to deduct only actual "lifting" or operating expenses and not capital expenditures, taxes, overhead and royalties. The Special Master sustained the Government's objection to the deduction of royalties but allowed the deduction of the other items. The Government has now concluded that no objection should be interposed to the allowance of capital expenditures if the trespass is held to have been an innocent one. Since the amount of the capital expenditures and the operating expenses taken together exceed the value of the production, there is no point in arguing the correctness of the deduction of taxes and overhead. Accordingly, the Government withdraws its exceptions (c) and (f) to finding 13 (R. 465) as well as the corresponding exception 2, relating to the conclusions (R. 470).

vey of Township 58" and "in good faith, since said time [1892] claimed title" to section 36 and in 1917 placed the Company in possession under a lease. This does not satisfy the obligation to make a finding on the ultimate fact as to whether the trespass was innocent or willful and, in any event, there is no evidence to support finding 10. There cannot be. The Special Master refused to hear evidence on the issue of innocent or wilful trespass.

At the very outset of the hearing before any evidence was offered on any issue, the Special Master announced as his tentative view that "apparently there has been good faith" (R. 24). Again, before any evidence was offered on the accounting issue he expressed as his tentative opinion that in a case such as this "there is always a presumption of good faith, and I believe it is my duty to indulge in that" (R. 55); that he would "not hear testimony that goes to the question of bad faith, because I do not believe bad faith has been properly pleaded." (R. 56); "that under the Government's pleading there is a presumption of good faith * * *" (R. 94–95); and that testimony as to wilfulness would be excluded "because, in my opinion, you have negatived bad faith by the allegations of your complaint" (R. 106). He announced as his final ruling (R. 141): "It is my ruling that, at this point, The Ohio Oil Company is there under a claim of right and is

not a willful trespasser, and it is not necessary for The Ohio Oil Company or the State of Wyoming to offer any proof on that." And again (R. 141): "Now, as a preface, having now ruled, as I do rule, that under the state of the record at this point The Ohio Oil Company is an innocent trespasser, * * * or is not a willful trespasser, the burden is on you—[the Government]." At the time of the final ruling the "state of the record" so far as the wilful trespass issue was concerned, consisted of the pleadings. No evidence had been offered on the point at that time by either side.

The Government insisted that the question of whether the trespass was innocent or wilful was an issue in the case and that the burden was on the defendants to prove their trespass was innocent, and not on the plaintiff to prove the trespass was wilful (R. 139–141). The Special Master overruled this contention and not only refused to require the defendants to proceed with their burden of rebutting the presumption of wilful trespass but held that the issue was not in the case and refused to receive evidence relating thereto. It was then that the Government offered documentary proof in support of its contention that the trespass was wilful (Pl. Ex. 49–91 for iden., R. 305–382). The defendants objected to the introduction of each of those documents on the ground that it was "wholly irrelevant and im-

material" because "there is no issue on this matter before this Court at this time" (R. 144). The objections were sustained and none of the exhibits was admitted into evidence (R. 144–148). The defendants offered no evidence on the issue of willful or innocent trespass. The plaintiff has taken exception to the Special Master's findings and conclusions relating to the accounting issue and to his failure to find that the defendants were willful trespassers (R. 465–471).

A. THE SPECIAL MASTER ERRED IN RULING AS A MATTER OF LAW THAT THE ISSUE OF WILFUL TRESPASS WAS NOT IN THE CASE

The Special Master erred in excluding the issue of wilful trespass. The law is settled that the burden is on the wrongdoer to prove his trespass is innocent. "A trespass on the property of another, in the absence of any other proof, is naturally presumed to be willful and intentional as a fact * * *" and is not presumed to be innocent as the Special Master thought (R. 55, 94–95; Report, R. 449). *Liberty Bell Gold Mining Co* v. *Smuggler-Union M. Co.*, 203 Fed. 795, 802, 804, 805 (C. C. A. 8), certiorari denied, 231 U. S. 747; *Central Coal & Coke Co.* v. *Penny*, 173 Fed. 340, 344 (C. C. A. 8); *Resurrection Gold Min. Co.* v. *Fortune Gold Min. Co.*, 129 Fed. 668, 679 (C. C. A. 8); *United States* v. *Homestake Min. Co.*, 117 Fed. 481, 486 (C. C. A. 8); *Elkhorn-Hazard Coal Co.* v. *Kentucky River Coal Corporation*, 20 F. 2d 67, 71 (C. C. A. 6); see *United States* v. *Ute Coal & Coke*

Co., 158 Fed. 20, 23 (C. C. A. 8); *Summers, Oil and Gas*, sec. 23, pp. 34–35.

The rationale of the rule is that a trespass on the property of another by its very nature is wrongful and liability flows for all resulting damage. The proof as to whether the trespass is innocent or wilful usually is in the possession of the trespasser. If he desires to mitigate damages by making deductions, the burden falls on him to establish that he is an innocent trespasser. See cases cited *supra*, pp. 45–46.

It is clear that the Special Master's ruling that the issue of wilful trespass was not in the case as made on the pleadings. It could not be otherwise because at the time the ruling was made there was no evidence in the record on the issue of wilful trespass. (See, *supra*, pp. 43–44.) Yet apparently it was not based on all of the pleadings but on the plaintiff's pleadings alone (R. 24, 55, 56, 94–95, 106, 141; Report, R. 449–450). The Special Master's report does not explain why the defendants' answer was excluded from consideration. Early in the hearing, for other purposes, he had recognized that the case was "committed to [him] on the issues joined in the pleadings as filed" (R. 26). Plainly it was error to test the presence or absence of an essential issue in the case by consideration of the pleadings of one party only. We shall show, however, that the issue was presented not

only by all the pleadings but by the complaint alone.

1. *All of the pleadings considered together present the issue of wilful trespass.*—The complaint alleged that the United States is the owner of section 36; that the State claims some right adverse to the United States; that the Company is in possession and claims some right under oil and gas leases from the State and has extracted oil valued in excess of $165,000; and that the State and the Company have no right, title or interest in the land. The Government prayed for judgment for the full value of all oil extracted from the land with interest. (R. 3–5.) In their answer the defendants denied the Government's title; alleged that defendants in "good faith" believed the State was the owner; that the leases to the Company were granted and accepted in that "good faith" belief; that the work done on the section was done under that "good faith" belief; that any oil and gas produced was produced under that "good faith" belief; that in the event the United States was adjudged to be the owner the Company should be given credit for all of its expenses; and that the expenses exceeded the value of the oil produced (R. 5–6). These allegations of the answer were denied by the Government's reply (R. 11).

On these pleadings issue was joined. The Government believes that the presence or absence

of wilful trespass as an issue must be tested by all the pleadings, not by the plaintiff's pleadings alone as the Special Master has done. And if the pleadings of both parties are considered, there is no escape from the issue joined by the affirmative, clear and repeated averments of "good faith" in paragraph 5 of the answer (R. 5–6), all of which were denied by the reply (R. 11). The answer is present and should not have been disregarded by the Special Master.

2. *The complaint considered alone presents the issue of wilful trespass.*—The Special Master confined himself to the plaintiff's pleadings (Report, R. 449). The reply denies the affirmative allegation of "good faith" pleaded in the answer (R. 11). How can a denial that defendants were trespassing in "good faith" possibly be construed as having "negatived any bad faith" (R. 106)? But even if the reply is not considered, the Special Master erred since the issue of wilful or innocent trespass is presented by the bare allegations of the complaint alone.

When the complaint alleged that the Company was in possession and that it had no right, title or interest in the land, it stated the facts which made the Company a trespasser. Furthermore, the prayer of the complaint demanded judgment for "the full value of all gas, oil, and other petroleum products extracted from said land," relief to which the Government would be entitled only

if the Company were a wilful trespasser. In the face of the demand in the complaint for the full value of production with interest it can scarcely be said that the defendants were not given notice of the Government's intention to hold them liable as wilful trespassers. And, of course, that they actually received notice is shown by the repeated, affirmative allegations of good faith in the answer (R. 5–6) (see p. 47, *supra*).

There was no obligation on the part of the Government to allege bad faith or wilfulness in so many words in the complaint. It is true that the complaint does not contain formal, technical and legalistic verbiage such as "wrongfully", "unlawfully", "wilfully", "with full knowledge of the Government's ownership", "in bad faith", or similar phraseology. For the United States to allege that the Company acted wrongfully or unlawfully in extracting the oil would be to plead a conclusion of law which flows from the factual allegations that the United States is the owner and the Company has no right in the property.[20]

[20] The complaint fully satisfies the Federal Rules of Civil Procedure which this Court promulgated to govern procedure in the federal district courts. Rule 8 (a) (2) requires a complaint to contain "a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled." Rule 8 (e) (1) states that "No technical forms of pleading or motions are required." It requires only that each averment be "simple, concise, and direct." The Special Master himself stated he was "going to try to

Cf. *Garbutt* v. *Blanding Mines Co.*, 141 F. 2d 679, 681 (C. C. A. 10). When the Government alleged unlawful possession of its land, the burden was cast upon the defendants to plead good faith as a fact and to prove the fact.

Presumably the Special Master entertained the view that the mere use of the stock pleading language in Paragraph IV of the complaint [21] that Wyoming claimed an interest adverse to the United States, coupled with the statement in Paragraph V that the Company claimed a right under leases from the State completely eliminated any question of wilfulness from the case (Report, R. 450). Carried to its logical conclusion this would mean that a true owner cannot recover full damages from a trespasser no matter how wilful the trespass is in fact, if the trespasser claims under a lease from a co-wrongdoer. No decision has been found excusing wilfulness simply because the trespasser claims from one who in fact is not the true owner of the land.

In *Union Naval Stores* v. *United States,* 240 U. S. 284, the *Stores Company* purchased products manufactured from crude turpentine. The

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follow the rules laid down for the District Court" although he did not consider them binding (R. 55). Thus where the rules required a ten-day notice on a demand for admissions and the Government gave only nine days, the Special Master ruled the demand untimely (R. 55).

[21] "The State of Wyoming claims some right, title or interest in said land adverse to the United States" (R. 3).

seller had manufactured the products from crude which he had taken from trees on public land. He claimed the right to tap the trees under a lease from a homesteader who had not perfected his entry. The seller was held to be a wilful trespasser and the purchaser was charged with the value of the manufactured products it bought, the measure of damages applicable to a wilful trespasser. The issue of wilful trespass was not excluded from the case simply because the seller *claimed* under a turpentine lease from one who had no title.

In *Guffey* v. *Smith,* 237 U. S. 101, the true owner of the land issued two oil and gas leases to different lessees. The holder of the earlier lease sued the subsequent lessee who had extracted oil from the land. The issue of wilfulness was not excluded from the case, even though the subsequent lessee claimed, not from a trespasser, but from the true owner. On the merits the subsequent lessee was held to be a wilful trespasser from the date of actual knowledge of the earlier lease. In *Eppenauer* v. *Ohio Oil Co.,* 128 F. 2d 363 (C. C. A. 5), certiorari denied, 306 U. S. 632, the defendant attempted to justify under a deed from a third party but there also the claim of right did not serve to eliminate the issue of wilfulness. Cf. *Central Coal & Coke Co.* v. *Penny,* 173 Fed. 340 (C. C. A. 8).

The Special Master erred in ruling that the issue of wilful trespass was not in the case.

B. ON THE RECORD IN THIS CASE THE OHIO OIL COMPANY IS LIABLE AS A WILFUL TRESPASSER

It is true in this case as it was in *Liberty Bell Gold Mining Co.* v. *Smuggler-Union M. Co.*, 203 Fed. 795, 804 (C. C. A. 8), certiorari denied, 231 U. S. 747, that the evidence to establish good faith is "solely in the possession of the trespasser, as he alone knows the reasons and intent which induced him to commit the trespass." Neither defendant offered evidence on the issue. Thus, the State did not explain why it issued leases first in 1915 before the land was surveyed, again in 1916 when the land had been withdrawn as a petroleum reserve and was still unsurveyed, and thereafter when the land was surveyed but continued to be a part of the petroleum reserve (Pl. Exs. 62, 61 for iden. R. 318–325). Likewise, The Ohio Oil Company was mute as to its reasons for exploiting Government land in 1917 when that land by executive order was a part of a federal petroleum reserve. The facts establishing the Government's ownership were matters of public record in both the local land office and the General Land Office in Washington (Pl. Exs. 1–6, R. 150A–186). There is no evidence to negative actual notice of the Government's title.

Certainly the Government does not know what reasons led the defendants to trespass. Either the Company intentionally or negligently failed to ascertain from the readily available public records who owned the land, the United States or

the State; or, after learning the true facts, the Company began and continued its operations with full knowledge that the section belonged to the United States. Under the first alternative the Company's action, in the absence of any explanation, was so reckless that it cannot be classified as excusable to the extent of relieving the Company from paying for its error. *Eppenauer* v. *Ohio Oil Co.*, 128 F. 2d 363, 364, 365 (C. C. A. 5) certiorari denied, 306 U. S. 632; *Central Coal & Coke Co.* v. *Penny*, 173 Fed. 340, 345–346 (C. C. A. 8); *Resurrection Gold Min. Co.* v. *Fortune Gold Min. Co.*, 129 Fed. 668, 679–680 (C. C. A. 8). Under the second alternative, if the Company had actual knowledge that the Government owned the land, its liability as a wilful trespasser is clear. *Guffey* v. *Smith*, 237 U. S. 101, 119; *Union Naval Stores* v. *United States*, 240 U. S. 284, 290; *Elkhorn-Hazard Coal Co.* v. *Kentucky River Coal Corporation*, 20 F. 2d 67 (C. C. A. 6); cf. *Hall Oil Co.* v. *Barquin*, 33 Wyo. 92, 149. The record as it now stands is silent as to the reasons and intent behind the trespass. Since these are matters solely and peculiarly in the possession of the defendants and since the defendants have chosen to make no disclosure or explanation it must be presumed as a fact that the trespass was wilful and intentional from its inception. *Liberty Bell Gold Mining Co.* v. *Smuggler-Union M. Co.*, 203 Fed. 795, 802, 804, 805 (C. C. A. 8), certiorari

denied, 231 U. S. 747; *Elkhorn-Hazard Coal Co.* v. *Kentucky River Coal Corporation,* 20 F. 2d 67, 71 (C. C. A. 6); *Central Coal & Coke Co.* v. *Penny,* 173 Fed. 340, 344 (C. C. A. 8); *Resurrection Gold Min. Co.* v. *Fortune Gold Min. Co.,* 129 Fed. 668, 679 (C. C. A. 8); *United States* v. *Homestake Min. Co.,* 117 Fed 481, 486 (C. C. A. 8); *United States* v. *Ute Coal & Coke Co.,* 158 Fed. 20, 23 (C. C. A. 8); cf. *United States* v. *Denver & R. G. R. R.,* 191 U. S. 84, 91–92; *Northern Pacific Railroad* v. *Lewis,* 162 U. S. 366, 377. *Summers, Oil and Gas,* sec. 23, pp. 34–35.

After 1929, it is unnecessary to rely on a presumption of fact alone.[22] There is positive proof that the Company knew the State had no title and knew the United States owned the land.

The Government offered in evidence a series of documents of which all but two were found among the records of the Office of the Commissioner of

[22] In view of the presumption of wilfulness which attaches to a trespass, the Government believes the defendants should be held liable as wilful trespassers for the entire period of production. Out of abundant caution, however, the Government excepted to the Special Master's failure to find the defendants were wilful trespassers at least since October 12, 1929 when the record shows affirmatively they were aware the United States owned the land (R. 468). The record thus permits the defendants to be held liable as wilful trespassers either from the beginning of production or since October 12, 1929.

Public Lands for Wyoming.[23] These documents make it plain that at least as early as 1929 the defendants knew they were trespassers on section 36, but nevertheless continued to trespass. These exhibits show that it was not until October 1929 that the State inquired of the United States as to whether the Government owned the section (Pl. Exs. 50, 52 for iden., R. 306–309). Wyoming was promptly informed by the Commissioner of the General Land Office that it had no title because the land had been included in a petroleum reserve prior to acceptance of the survey (Pl. Ex. 53 for iden., R. 309). An investigation of the facts relating to the withdrawal and the survey by the Company corroborated the information received from the Commissioner of the General Land Office (Pl. Exs. 58, 59, 61 for iden., R. 314–316, 318–323). A responsible official of the Company submitted a detailed title opinion to the General Counsel of the Company in which it was concluded that the State had no title (Pl. Ex. 61 for iden., R. 318–322). The State Commissioner of Public Lands was of the same opinion

[23] As previously explained the Special Master ruled as a matter of law that the issue of wilful trespass was not in the case and that the defendants need not offer any proof on that matter (supra, pp. 43–44). It was then that the Government offered its exhibits 49–91 for iden. (R. 305–382) to prove wilfulness. The Special Master refused to admit them into evidence. This ruling was erroneous since the issue of wilfulness was in the case (supra, pp. 45–52). (See plaintiff's exception 3, R. 469.)

(Pl. Exs. 62, 64 for iden., R. 323–325, 327–328). This documentary proof refutes the Special Master's statement, unsupported by any evidence, that "Here we have a situation where the defendant State at all times in perfect good faith asserted title to the land in question and believed that it had title, * * *" (Report, R. 451).[24] On the contrary the documents show that since October 12, 1929, if not earlier, both defendants were completely aware of the Government's claim of ownership, and since January 1930 knew the Government's claim was a valid one (Pl. Exs. 61, 62, 64 for iden., R. 318–325, 327–328). After 1929 the defendants devoted their efforts to unsuccessful attempts to obtain legislation from Congress which would grant the land to the State or would authorize a conveyance (Pl. Exs. 62, 64, 65, 67, 68, 69, 70, 72, 73, 74, 75, 76, 86, 89 for iden., R. 323–325, 327–344, 353–354, 359–361).

The Ohio Oil Company is a trespasser and under the law the trespass was wilful unless proven innocent. If the Company was an innocent trespasser, proof of that fact resides with it. On

[24] This evidence likewise completely refutes the Special Master's finding 10 "that the State of Wyoming in good faith treated said [1892] survey as a complete survey of Township 58 and * * * since said [1892] time claimed title to said section * * *" (R. 459). Nowhere in the documentary proof, much of which consists of correspondence discussing the title to the section, is there a single reference to the survey in 1892; the only survey mentioned is the one approved in 1916. As set forth heretofore, finding 10 is not supported by any evidence (supra pp. 42–43).

this record there is no proof of innocence. It follows that The Ohio Oil Company should be held liable for the full value of production and income from section 36. (See Exception 1, R. 468.)

C. THE CASES ON WHICH THE SPECIAL MASTER RELIES DO NOT SUPPORT HIS OPINION THAT THE TRESPASS WAS INNOCENT

In his report (R. 450–451) the Special Master expressed the "opinion that the trespass here was an innocent one under claim of right . . ." He based this opinion "very largely upon the language used by this Court" in *Gulf Refining Co.* v. *United States,* 269 U. S. 125 (R. 451). The Special Master thought that in the *Gulf Refining Co.* case "this Court held that [the] trespasser could continue in possession of lands originally taken in good faith even after a judgment against him and not be charged with willful trespass" (R. 451).

The Special Master incorrectly analyzed the holding in the *Gulf Refining Co.* case. That case was a sequel to the case of *Mason* v. *United States,* 260 U. S. 545. In the *Gulf Refining Co.* case the Government sought an accounting for oil extracted *pendente lite* between the end of the period of accounting covered by the original judgment in the *Mason* case and the cessation of operations by the defendants after the proceedings on appeal. The entire operations of the defendants were conducted at a loss but a profit was shown for the period *pendente lite* considered by itself.

The circuit court of appeals held that the trespasser was not entitled to offset any part of the loss suffered during the initial period against the value of the oil produced *pendente lite*. This Court referred to the ruling of the circuit court of appeals as having "proceeded from the standpoint that one who continues in possession of lands, originally taken in good faith, after judgment against him, may not have the advantage of the good faith of his original entry to enable him to offset his expenditures against the value of the oil extracted after judgment pending proceedings on appeal." (269 U. S. at pages 136–137.)

Apparently it was from the quoted language that the Special Master gained his impression that the *Gulf Refining Co.* case stood for the proposition that where the original trespass was in good faith the trespasser could not subsequently be charged with wilfulness. But that language was used to characterize the erroneous basis of the decision of the circuit court of appeals which was reversed. This Court made it perfectly plain that the issue of wilful trespass was not in the case when it stated (p. 137): "* * * we are not here dealing with the common law doctrine in respect of trespassers in good faith * * *." The Court explained that the measure of damages fixed in the *Mason* case was controlled by the Louisiana Code which permitted the cost of production to be deducted from the value of the oil

"even though the defendants went into possession in technical bad faith but in moral good faith" (p. 134); and that the same measure applied to the period of accounting *pendente lite* as applied to the period covered by the judgment in the *Mason* case (p. 137). A reading of the opinion makes it apparent that the *Gulf Refining Co.* decision turns primarily on the peculiar provisions of the Louisiana Code which are not applicable in the case at bar.

The Special Master misconceived the holding of this Court in the *Gulf Refining Co.* case. Where the question has arisen this Court has held that even though a trespass is innocent in its origin it may subsequently become wilful. *Guffey* v. *Smith*, 237 U. S. 101, 118–119.

The Special Master cited *Martel* v. *Hall Oil Co.*, 36 Wyo. 166,[25] as holding that the rule of damages in Wyoming "unquestionably" "is the equitable

[25] The Special Master also cited *United States* v. *Standard Oil Co. of California*, 21 F. Supp. 645 (S. D. Cal.) affirmed, 107 F. 2d 402 (C. C. A. 9), certiorari denied, 309 U. S. 654, 673; and *Mason* v. *United States*, 260 U. S. 545. (Report, R. 451). In the *Standard Oil* case the Government conceded that Standard was "entitled to deduct, from the value in place of the oil and gas converted, the cost of its drilling and operating expenses. [Citations.] By this concession, the government, in effect, concedes good faith to Standard." 21 F. Supp. 653–654. In the *Mason* case this Court held that the measure of damages was determined by Louisiana law and that a Louisiana statute provided for deduction of all costs of production. 260 U. S. 545, 555–559. Wyoming has no comparable statute.

rule rather than the strict common rule" (Report, R. 451). In the *Martel* case, the trespasser drilled a well and failed to find oil. The landowner sought to recover damages on the theory that when the trespasser proved there was no oil he destroyed the speculative mineral value of the land. The holding of the case has no application here. However, in speaking of the rule of damages in Wyoming the court did express the following (p. 178):

> Now in the ordinary case of trespass, where oil or other minerals are removed from land, the trespasser, if in good faith, is permitted to deduct his expenses from the value of the mineral taken from the land. Even in the case of willful trespass, he will merely lose what he produced, without reimbursement for the expenses which he has incurred.

How this supports the Special Master's position is not at all clear since so far as wilful trespass is concerned it is merely a restatement of the rule of damages applied by this Court in *Wooden-ware Co.* v. *United States*, 106 U. S. 432; *Guffey* v. *Smith*, 237 U. S. 101; and *Union Naval Stores* v. *United States*, 240 U. S. 284. It is exactly the rule which the Government contends should be applied in this case.

As a matter of fact, the Special Master did not clearly define the measure of damages he was

applying except to say it was "one that appeals to the conscience of the Court" (Report, R. 451). This legal cliche expresses an extremely elastic rule but it does not permit the chancellor to proceed in the absence of evidence and without regard to the law. Here, the defendants made no appeal "to the conscience of the Court." They offered no evidence even to suggest they honestly believed they had a right to be on the land.

It is submitted that as a matter of law a trespass is presumed to be wilful in fact. The defendants offered no evidence to rebut this presumption. As to Wyoming, there is no clear finding whether the State was a wilful or innocent trespasser and if finding 10, Report (R. 459) be treated as a finding of innocence, it is erroneous since there is no evidence to support it. As to the Company, there is no finding whatsoever as to whether its trespass was wilful or innocent. Patently the Special Master erred in ruling as a matter of law that the issue of wilful trespass was not in the case and in failing to admit the documentary evidence offered by the plaintiff (Exception 3, R. 469). We believe that on this record the Court should hold that the trespass was wilful and should give judgment to the Government for the full value of the production without deductions (Exception 1, R. 470).

III

THE UNITED STATES IS ENTITLED TO A JOINT AND SEVERAL JUDGMENT AGAINST THE DEFENDANTS FOR THE AMOUNT OF ROYALTIES WITH INTEREST

(Plaintiff's Exception (c) to Conclusion 2 (R. 469) and Exception 3 (R. 470–471))

The Special Master's report is completely silent as to the Government's demand for a joint and several judgment against the defendants for the amount of royalties paid by The Ohio Oil Company to Wyoming ($17,306.30 as of December 31, 1944, Fdg. 13, R. 460). It is the Government's position that even if it be assumed that the defendants were innocent trespassers, there can be no question as to the right of the United States to a joint and several judgment against the defendants for the royalties. *Mason* v. *United States,* 260 U. S. 545, 559–560; *United States* v. *Standard Oil Co. of California,* 21 F. Supp. 645, 654 (S. D. Cal.), affirmed, 107 F. 2d 402, 416 (C. C. A. 9), certiorari denied, 309 U. S. 654 and 309 U. S. 673. In the *Mason* case this Court said (pp. 559–560):

> These royalties arose from and were paid out of proceeds of the oil; but this oil belonged to the plaintiff as owner of the property from which it had been taken. The defendants who received the royalties were obviously not entitled to retain them, and having incurred no expense in connection with the mining operations, were liable for the entire amount and the defendants

who paid the royalties were jointly liable as co-wrongdoers. A joint judgment against all was therefore proper.

The *Mason* case is dispositive of the royalties question.

The Government's exception to the Special Master's failure to conclude that the defendants are liable for the amount of the royalties with interest computed by years from the dates of payments should be allowed and a joint and several judgment should be entered against the defendants in that amount.

IV

THE UNITED STATES IS NOT LIABLE FOR COSTS

(Plaintiff's exception and objection to final paragraph of proposed decree (R. 471))

The United States has excepted (R. 471) to the last paragraph of the Special Master's proposed decree (Report, R. 461) on the ground that the language concerning costs is ambiguous and confusing and may subject the United States to payment of a portion of defendants' costs. One provision of the proposed decree specifies that "none of said parties shall have and recover the costs expended by it herein," while the other recites "that the additional costs incurred in this court in the trial of this cause shall be divided equally between the parties hereto." It is not clear what distinction is intended between "the costs expended by it herein" and "the additional

costs incurred in this court in the trial of this cause." In any event if it was intended that the costs be divided in such a manner as to charge the United States with any portion of the costs incurred by either of the defendants (the Special Master suggests that the costs be equally divided three ways (Report, R. 456–457)), then the proposed decree would allow costs against the United States and accordingly would be contrary to law. *United States* v. *Barker,* 2 Wheat. 395.

V

THE DATE THE PROPERTY IS SURRENDERED, NOT THE DATE OF THE DECREE, DEFINES THE END OF THE PERIOD OF ACCOUNTING AFTER JUDGMENT

(*Plaintiff's exception* (*f*) *to Conclusion 2* (*R. 470*))

In his Conclusion 2 the Special Master limited the Government's right to accounting to a period ending with the "date" of the decree (Report, R. 460). In the proposed decree the Special Master directs that the property be surrendered within sixty days after judgment with provision for a joint statement of account from January 1, 1945, to the end of the 60-day period or earlier if the surrender is earlier (Report, R. 461). This provision of the proposed decree is inconsistent with the corresponding provision of conclusion 2.

Obviously, the date of surrender, not the date of the decree, should control the termination of the

supplemental period of accounting following the entry of judgment.

CONCLUSION

It is submitted that the United States is entitled to judgment as follows:

1. To a judgment quieting in the United States title to section 36;

2. To a judgment against The Ohio Oil Company for the full value of production, less royalties, ($151,011.23 as of December 31, 1944) derived from section 36 from the beginning of operations to the date the defendants surrender possession (not to exceed sixty days after the entry of judgment following the Special Master's recommendation); and

3. To a joint and several judgment against both defendants for the amount of royalties paid by the Company to Wyoming from the beginning of operations with interest.

Respectfully.

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MARCH 1947.

APPENDIX

Section 6 of the Act of August 9, 1888, c. 819, 25 Stat. 393.

SEC. 6. That where lands in the sixteenth and thirty-sixth sections, in the Territory of Wyoming, are found upon survey to be in the occupancy, and covered by the improvements of an actual pre-emption or homestead settler, or where either of them are fractional in quantity, in whole or in part, or wanting because the townships are fractional or have been or shall hereafter be reserved for public purposes, or found to be mineral in character, other lands may be selected by an agent appointed by the governor of the Territory in lieu thereof, from the surveyed public lands within the Territory not otherwise legally claimed or appropriated at the time of selection, in accordance with the principles of adjustment prescribed by section twenty-two hundred and seventy-six of the Revised Statutes of the United States, and upon a determination by the Interior Department that a portion of the smallest legal subdivision in a section numbered sixteen, or thirty-six, in Wyoming, is mineral land, such smallest legal subdivision shall be excepted from the reservation for schools, and indemnity allowed for it in its entirety, and such subdivisions, or the portions of them remaining after segregation of the mineral lands or claims, shall be treated as other public lands of the United States.

Act of July 10, 1890, c. 664, Secs. 2, 4, 5, 6, 7, 8, 10, 11, 13, 14, 26 Stat. 222 (Enabling act admitting Wyoming into the Union).

SEC. 2. That the said State shall consist of all the territory included within the following boundaries, to wit: Commencing at the intersection of the twenty-seventh meridian of longitude west from Washington with the forty-fifth degree of north latitude and running thence west to the thirty-fourth meridian of west longitude; thence south to the forty-first degree of north latitude; thence east to the twenty-seventh meridian of west longitude, and thence north to the place of beginning: *Provided,* That nothing in this act contained shall repeal or affect any act of Congress relating to the Yellowstone National Park, or the reservation of the park as now defined, or as may be hereafter defined or extended, or the power of the United States over it; and nothing contained in this act shall interfere with the right and ownership of the United States in said park and reservation as it now is or may hereafter be defined or extended by law; but exclusive legislation, in all cases whatsoever, shall be exercised by the United States, which shall have exclusive control and jurisdiction over the same; but nothing in this proviso contained shall be construed to prevent the service within said park of civil and criminal process lawfully issued by the authority of said State; and the said State shall not be entitled to select indemnity school lands for the sixteen and thirty-sixth sections that may be in said park reservation as the same is now defined or may be hereafter defined.

* * * * *

SEC. 4. That sections numbered sixteen and thirty-six in every township of said proposed State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided,* That section six of the act of Congress of August ninth, eighteen hundred and eighty-eight, entitled "An act to authorize the leasing of the school and university lands in the Territory of Wyoming, and for other purposes," shall apply to the school and university indemnity lands of the said State of Wyoming so far as applicable.

SEC. 5. That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

SEC. 6. That fifty sections of the unappropriated public lands within said State, to be selected and located in legal subdivisions as provided in section four of this act, shall be, and are hereby, granted to said State for the purpose of erecting public buildings at the capital of said State.

SEC. 7. That five per centum of the proceeds of the sales of public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State, to be used as a permanent fund, the interest of which only shall be expended for the support of the common schools within said State.

SEC. 8. That the lands granted to the Territory of Wyoming by the act of February eighteenth, eighteen hundred and eighty-one entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes," are hereby vested in the State of Wyoming, to the extent of the full quantity of seventy-two sections to said State, and any portion of said lands that may not have been selected by said Territory of Wyoming may be selected by the said State; but said act of February eighteenth, eighteen hundred and eighty-one, shall be so amended as to provide that none of said lands shall be sold for less than ten dollars per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said State and the income thereof be used exclusively for university purposes. The schools, colleges, and universities provided for in this act shall forever remain under the exclusive control of the said State, and

no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college, or university. The section of land granted by the act of May twenty-eighth, eighteen hundred and eighty-eight, to the Territory of Wyoming for a fish hatchery and other public purposes shall, upon the admission of said State of Wyoming into the Union, become the property of said State.

SEC. 10. That ninety thousand acres of land, to be selected and located as provided in section four of this act, are hereby granted to said State for the use and support of an agriculture college in said State as provided in the acts of Congress making donations of lands for such purpose.

SEC. 11. That in lieu of the grant of land for purposes of internal improvement made to new States by the eighth section of the act of September fourth, eighteen hundred and forty-one, which section is hereby repealed as to the State of Wyoming, and in lieu of any claim or demand by the said State under the act of September twenty-eighth, eighteen hundred and fifty, and section twenty-four hundred and seventy-nine of the Revised Statutes, making a grant of swamp and overflowed lands to certain States, which grant it is hereby declared is not extended to the State of Wyoming, and in lieu of any grant of saline lands to said State, the following grants of land are hereby made, to wit:

To the State of Wyoming: For the establishment and maintenance and support in the said State of the insane asylum in Uinta County, thirty thousand acres; for

the penal, reform, or educational institution in course of construction in Carbon County, thirty thousand acres; for the penitentiary in Albany County, thirty thousand acres; for the fish-hatchery in Albany County, five thousand acres; for the deaf, dumb, and blind asylum in Laramie County, thirty thousand acres; for the poor farm in Fremont County, ten thousand acres; for a hospital for miners who shall become disabled or incapacitated to labor while working in the mines of the State, thirty thousand acres; for public buildings at the capital of the State, in addition to those hereinbefore granted for that purpose, seventy-five thousand acres; for State charitable, educational, penal, and reformatory institutions, two hundred and sixty thousand acres, making a total of five hundred thousand acres: *Provided,* That none of the lands granted by this act shall be sold for less than ten dollars per acre.

* * * * *

SEC. 13. That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivision or portion of any smallest subdivision thereof in any township, shall be found by the Department of the Interior to be mineral lands, said State is hereby authorized and empowered to select, in legal subdivisions, an equal quantity of other unappropriated lands in said State in lieu thereof, for the use and the benefit of the common schools of said State.

SEC. 14. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the Secretary of the Interior, from the surveyed, unreserved and uppropriated (sic) public

lands of the United States within the limits of the State entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said State the number of acres heretofore donated by Congress to said Territory for similar objects.

Act of February 28, 1891, c. 384, 26 Stat. 796.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections twenty-two hundred and seventy-five and twenty-two hundred and seventy-six of the Revised Statutes of the United State (sic) be amended to read as follows:

SEC. 2275. Where settlements with a view to pre-emption or homestead have been, or shall hereafter be made, before the survey of the lands in the field, which are found to have been made on sections sixteen or thirty-six, those sections shall be subject to the claims of such settlers; and if such sections, or either of them, have been or shall be granted, reserved, or pledged for the use of schools or colleges in the State or Territory in which they lie, other lands of equal acreage are hereby appropriated and granted, and may be selected by said State or Territory, in lieu of such as may be thus taken by pre-emption or homestead settlers. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory where sections sixteen or thirty-six are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States: *Provided,* Where any State is entitled to said

sections sixteen and thirty-six, or where said sections are reserved to any Territory, notwithstanding the same may be mineral land or embraced within a military, Indian, or other reservation, the selection of such lands in lieu thereof by said State or Territory shall be a waiver of its right to said sections. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory to compensate deficiencies for school purposes, where sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever." And it shall be the duty of the Secretary of the Interior, without awaiting the extension of the public surveys, to ascertain and determine, by protraction or otherwise, the number of townships that will be included within such Indian, military, or other reservations, and thereupon the State or Territory shall be entitled to select indemnity lands to the extent of two sections for each of said townships, in lieu of sections sixteen and thirty-six therein; but such selections may not be made within the boundaries of said reservations: *Provided, however,* That nothing herein contained shall prevent any State or Territory from awaiting the extinguishment of any such military, Indian, or other reservation and the restoration of the lands therein embraced to the public domain and then taking the sections sixteen and thirty-six in place therein; but nothing in this proviso shall be construed as conferring any right not now existing.

SEC. 2276. That the lands appropriated by the preceding section shall be selected

from any unappropriated, surveyed public lands, not mineral in character, within the State or Territory where such losses or deficiencies of school sections occur; and where the selections are to compensate for deficiencies of school lands in fractional townships, such selections shall be made in accordance with the following principles of adjustment, to wit: For each township, or fractional township, containing a greater quantity of land than three-quarters of an entire township, one section; for a fractional township, containing a greater quantity of land than one-half, and not more than three-quarters of a township, three quarters of a section; for a fractional township, containing a greater quantity of land than one quarter, and not more than one half of a township, one-half section; and for a fractional township containing a greater quantity of land than one entire section, and not more than one-quarter of a township one-quarter section of land: *Provided,* That the States or Territories which are, or shall be entitled to both the sixteenth and thirty-sixth sections in place, shall have the right to select double the amounts named, to compensate for deficiencies of school land in fractional townships.

Revised Statutes 2395 now codified as 43 U. S. C. 751.

SEC. 2395. The public lands shall be divided by north and south lines run according to the true meridian, and by others crossing them at right angles, so as to form townships of six miles square, unless where the line of an Indian reservation, or of tracts of land heretofore surveyed or patented, or the course of navigable rivers,

may render this impracticable; and in that case this rule must be departed from no further than such particular circumstances require.

Second. The corners of the townships must be marked with progressive numbers from the beginning; each distance of a mile between such corners must be also distinctly marked with marks different from those of the corners.

Third. The township shall be subdivided into sections, containing, as nearly as may be, six hundred and forty acres each, by running through the same, each way, parallel lines at the end of every two miles; and by making a corner on each of such lines, at the end of every mile. The sections shall be numbered respectively, beginning with the number one in the northeast section and proceeding west and east alternately through the township with progressive numbers till the thirty-six be completed.

Fourth. * * *

Fifth. * * *

Sixth. * * *

Seventh. * * *

Eighth. These field-books shall be returned to the surveyor-general, who shall cause therefrom a description of the whole lands surveyed to be made out and transmitted to the officers who may superintend the sales. He shall also cause a fair plat to be made of the townships and fractional parts of townships contained in the lands, describing the subdivisions thereof, and the marks of the corners. This plat shall be recorded in books to be kept for that purpose; and a copy thereof shall be kept open

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at the surveyor-general's office for public information, and other copies shall be sent to the places of the sale, and to the General Land-Office.

PERTINENT EXCERPTS FROM THE 1890 "MANUAL OF SURVEYING INSTRUCTIONS FOR THE SURVEY OF PUBLIC LANDS OF THE UNITED STATES * * *"

EXTERIORS OR TOWNSHIP LINES

[p. 37] The east and west boundaries of townships are always to be run from south to north on a true meridian line; and the north and south boundaries are to be run from east to west, or from west to east (according to the location of the township to be surveyed with reference to prior surveys), on a *random* or trial line and corrected back on a true line. The distance north or south of the township corner to be closed upon, from the point of intersection of these random lines with the east or west boundary of the township, must be carefully measured and noted. Should it happen, however, that such random line should fall short, or overrun in length, or intersect the east or west boundary more than *three chains'* distance from the township corner thereon, as compared with the corresponding boundary on the south (due allowance being made for convergency), the line, and if necessary the entire exterior boundaries of the township, must be retraced, so as to discover and correct the error. In running random lines temporary corners are to be set at each 40 and 80 chains, and permanent corners established upon the true line as corrected back, in accordance with instructions, throwing the excess or deficiency on the west half mile, as prescribed by law. Permanent corners are to be established in accordance with instructions on the east and west township boundaries at the time they are run. Whenever practicable the town-

ship lines within these tracts of 24 miles square must be surveyed in regular order from *south* to *north,* i. e., the exterior boundaries of the township in any one range lying immediately north of the south boundary of such tract of 24 miles square must first be surveyed, and the exteriors of the other three townships in said range extended therefrom, in regular order from *south* to *north,* and it is preferable to first survey the entire range of townships in such tract adjoining the east boundary or adjoining the west boundary, and the other three ranges in regular sequence. In cases, however, where the character of the land is such that this rule cannot be complied with, the following will be observed:

In extending the *south* or *north* boundaries of a township to the *west,* where the *southwest* or *northwest* corners cannot be established in the regular way by running a north and south line, such boundaries will be run *west on a true* line, allowing for convergency on the west half mile; and from the township corner established at the end of such boundary, the west boundary will be run *north* or *south,* as the case may be. In extending *south* or *north* boundaries of a township to the *east,* where the *southeast* or *northeast* corner cannot be established in the regular way, the same rule will be observed, except that such boundaries will be run *east on a true line,* and the *east* boundary run *north* or *south,* as the case may be. One set of chairmen only is required in running township lines.

METHOD OF SUBDIVIDING

[p. 37] 1. The variation is to be found by observations on Polaris taken at or near the S. E. corner of the township. The

first mile, both of the [p. 38] south and east boundaries of each township you are required to subdivide, is to be carefully traced and measured before you enter upon the subdivision thereof. This will enable you to observe any errors that may have been made in former surveys either in direction or length of the lines and will also enable you to compare your chaining with that upon the township boundaries.

2. * * *

3. After adjusting your compass to the variation which you have determined by observation, you will commence at the corner to sections 35 and 36, on the south boundary, and run a line *parallel to*[1] *the range line,* forty chains, to the quarter-section corner, which you are to establish between sections 35 and 36; continuing on said course forty chains farther, you will establis the corner to sections 25, 26, 35, and 36.

4. From the section corner last named run a *random* line, without blazing, *parallel to the south boundary of section* 36, for the corner of sections 25 and 36, on east boundary, and at forty chains from the starting point set a post for *temporary* quarter-section corner. If you intersect exactly at the corner, you will blaze your random line back, and establish it as the *true* line; but if your random line intersects the said east boundary, either north or south of said corner, you will measure the distance of such intersection, from which you will calculate a course that will run a *true* line back to the corner from which your random started. You will establish the *perma-*

[1] The original print read "northwardly with true bearing of" instead of "parallel to." The manual was corrected to read as shown in this appendix by tissue inserts pasted opposite the page to be corrected.

nent quarter-section corner at a point equidistant from the two terminations of the *true* line.

5. * * *

6. * * *

[p. 39] 7. * * *

8. * * *

9. Quarter-section corners, both upon north and south and upon east and west lines, are to be established at a point *equidistant* from the corresponding section corners, except upon the lines closing on the north and west boundaries of the township, and in those situations the quarter-section corners will always be established at precisely *forty chains* to the north or west (as the case may be) of the respective section corners from which those lines respectively *start,* by which procedure the excess or deficiency in the measurements will be thrown, according to law, on the extreme tier of quarter-sections.

* * * * *

PRESCRIBED LIMITS FOR CLOSINGS AND LENGTH OF LINES IN CERTAIN CASES

[p. 40] 1. Every north-and-south section line, except those terminating in the north boundary of the township, must be *eighty chains* in length.

2. The east-and-west *section lines,* except those terminating in the west boundary of the township, are to be within *eighty links* of the actual distance established on the south boundary line of the township for the width of said tier of sections, and must close within fifty links north or south of the section corner.

3. The north boundary and south boundary of any one section, except in the extreme western tier, are to be within *eighty links* of equal length.

4. The meanders within each fractional section, or between any two meander posts, or of an island in the interior of a section, must close within a limit

determined by allowing *five-eighths of a link* for *each chain* of said meander line when less than 80 chains in length. When the meander line is more than 80 chains in length the closing error must in no case *exceed* 150 links.

5. In running *random* township exteriors, if such random lines fall short or overrun in length, or intersect the eastern or western boundary, as the case may be, of the township, at more than *three chains* north or south of the true corner, the lines must be *retraced,* even if found necessary to remeasure the meridional boundaries of the township. One set of chainmen only is required in subdividing.

RETRACING TOWNSHIP LINES AND BOUNDARIES OF PRIVATE LAND CLAIMS

If, in subdividing a township, it is found that the exterior boundaries have been improperly run, measured, or marked, or the corners established thereon have been obliterated, the deputy will resurvey so much of said exterior boundaries as may be necessary, and establish new corners upon same wherever necessary. Where no subdivisions have been made on either side of a township boundary, it will be corrected, if necessary, in point of alignment as well as measurement, by establishing the section corners at lawful distances from the south or east boundaries of the township (as the case may be), and upon a right line extending between the township corners; and in such case, the old corners on said township boundaries will be destroyed.

Where subdivisional lines have been closed upon a township boundary in advance of the preliminary survey of the same, its alignment will not be changed. If it is found necessary to establish new corners on such boundary they will receive only the marks referring to the sections in the township being subdivided, and the marks on the old corners on such boundary, which refer to such sections, will be obliterated.

In all cases such necessary corrections will be made as will place the section corners at the aforesaid lawful distances from the south or east boundary, in order that a legal subdivision of the township may be made, and where new corners are thus necessarily established, the distance and direction between new and old corners must be carefully noted.

New corners on township boundaries must be established by a survey of such lines, and *in no case* will such corners be established from *data* acquired in running lines closing on such boundaries. One set of chainmen, only, is required in retracing township lines.

* * * * *

FIELD NOTES

[p. 41] The proper blank books for field notes will be furnished by the surveyor-general, and in such books the deputy surveyor must make a faithful, distinct, and minute record of everything officially done and observed by himself and his assistants, pursuant to instructions, in relation to running, measuring, and marking lines, establishing corners, etc., and present, as far as possible, a full and complete topographical description of the country surveyed.

From the *data* thus recorded at the time when the work is done on the ground, the deputy must prepare *true* field notes of the surveys executed by him, in the manner herinafter prescribed, and return same to the surveyor-general, together with the required sketches, at the earliest practicable date after the completion of his work in the field.

* * * * *

The field notes of the survey of base, meridian, standard, exterior, (p. 42) and subdivision lines are each to be written in *separate books*. The subdivisions of *each* township will form one book.

* * * * *

[p. 43] Field notes of the subdivisional survey of townships must describe the corners and topography as above required, and the "general description" at the end of such notes must state minutely the character of the land, soil, timber, etc., found in such townships.

* * * * *

[P. 47] SPECIMEN FIELD NOTES AND PLATS

* * * * *

[p. 48] Each township plat is to be prepared in *triplicate:* one for the General Land Office, one for the United States district land office, and the third to be retained as the record in the office of the surveyor-general.

The plat for the local land office must not be forwarded until notice is received by the surveyor-general from the Commissioner of the General Land Office that the survey represented on said plat has been accepted, and that he is authorized to file the triplicate plat.

* * * * *

[p. 49] All township plats are to be drawn to a uniform scale of 40 chains to 1 inch, United States standard, and diagrams of exteriors to a scale of 160 chains to 1 inch.

* * * * *

With the copy of each township plat furnished to a district land office, the surveyor-general is required by law to furnish *descriptive notes* as to the character and quality of the soil and timber found on and in the vicinity of each surveyed line, and giving a description of each corner.

* * * * *

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No. 10, Original

In the Supreme Court of the United States

OCTOBER TERM, 1946

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF WYOMING AND THE OHIO OIL COMPANY

REPLY BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 10, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF WYOMING AND THE OHIO OIL COMPANY

REPLY BRIEF FOR THE UNITED STATES

This reply brief is submitted primarily in response to defendants' contentions not anticipated in the plaintiff's brief. (See points 1 and 2 below.) This brief also undertakes to supplement our discussion of defendants' argument that the Wyoming Enabling Act in itself operated to reserve school lands (Pl. Br. 37–39; see point 3 below). The defendants' contentions to which this brief is addressed are as follows:

1. That the Wyoming Enabling Act represents a departure from the federal policy relating to school grants as expressed in *Heydenfeldt* v. *Daney Gold, etc. Co.*, 93 U. S. 634 (Def. Br. 42–45; 58–65).

2. That the doctrine of the railroad grant cases should be extended to the school grant contained

in the Wyoming Enabling Act (Def. Br. 33–37; 75–85).

3. That the phrase "but shall be reserved for school purposes only," employed in section 5 of the Wyoming Enabling Act, in itself operated as a "reservation" by the United States of all unsurveyed school lands in Wyoming so as to prevent their inclusion in federal reserves (Def. Br. 29–43). As a corollary the defendants argue that the Wyoming Enabling Act was not affected by the amendment of February 28, 1891, c. 384, 26 Stat. 796, generally liberalizing lieu land provisions (Def. Br. 71–73).

I

THERE HAS BEEN NO SHIFT IN THE FEDERAL POLICY RESPECTING SCHOOL GRANTS

The defendants assert that Congress chose the language in section 5 of the Wyoming Enabling Act for the deliberate purpose of effecting a change in the federal policy defined in the case of *Heydenfeldt* v. *Daney Gold, Etc. Co.*, 93 U. S. 634 (Def. Br. 42–45; 58–65).[1] Defendants' argument closely patterns the opinion in *State* v.

[1] In this connection defendants place considerable emphasis on the legislative history of section 14 of the Wyoming Organic Act of 1868, relating to school sections, as indicating a congressional intent not to subject unsurveyed school lands to preemption or entry (Def. Br. 58–61) and as establishing a departure from the policy of the Act of February 26, 1859, 11 Stat. 385, authorizing in all public-land States and Territories the selection of lieu lands for unsurveyed school sec-

Whitney, 66 Wash. 473, 483. But after this Court's decision in *United States* v. *Morrison*, 240 U. S. 192, the Supreme Court of Washington, recognizing its error, at the first opportunity explicitly overruled its decision in the *Whitney* case and held that title to unsurveyed sections 16 and 36 did not pass to Washington under provisions substantially identical with sections 4 and 5 of the Wyoming Enabling Act. *Thompson* v. *Savidge*, 110 Wash. 486, 505–506.[2] After Wy-

tions settled under the public land laws (Def. Br. 20). Defendants seem to think this legislative history placed the Wyoming Organic Act in a class separate from the organic acts of other Territories (Def. Br. 61). Congress thought otherwise. Section 14 was reenacted as a part of R. S. 1846 covering the Territory of Wyoming and seven other Territories. At the same time the 1859 Act was reenacted as R. S. 2275. The revised statutes, not the original enactments, control in the absence of ambiguity. *United States* v. *Bowen*, 100 U. S. 508, 513; *Continental Casualty Co.* v. *United States*, 314 U. S. 527, 530. Moreover, R. S. 2275 (1859 Act) was amended in 1891 for the precise purpose of providing for the uniform benefit and operation of school grants among the public land States and Territories. Act of February 28, 1891, c. 384, 26 Stat. 796, 43 U. S. C. 851 (See S. Rept. No. 502, 51st Cong., 1st Sess., p. 1 (1890); H. Rept. No. 2384, 51st Cong., 1st sess., p. 1 (1890)).

[2] This was the consistent position of the Department of the Interior with respect to the Washington Enabling Act, both before and after the *Thompson* case. *State of Washington* v. *Kuhn*, 24 L. D. 12, 13 (1897) cited with approval in *United States* v. *Morrison*, 240 U. S. 192, 207; *State of Washington* v. *Geisler*, 41 L. D. 621, 622–625 (1913); *State of Washington* v. *Lynam*, 45 L. D. 593, 594 (1916); *F. A. Hyde and Company*, 48 L. D. 132, 133–134; 48 L. D. 134 (1921). The defendants' statement of the holding in the *Hyde* case, *supra* (Def. Br. 46), is the opposite of what was there held.

oming, four states were admitted into the Union. If the defendants are correct about a change of federal policy it might be expected that the language of the enabling acts of those four states uniformly would follow the pattern of section 5 of the Wyoming Enabling Act. Two of them did (Oklahoma, secs. 7, 9, 34 Stat. 267, 272, 274; Utah, Secs. 6, 10, 28 Stat. 107, 109, 110). However, the enabling acts of the other two, the last admitted into the Union, contain no provision such as defendants point to in section 5 of the Wyoming Enabling Act (New Mexico, sec. 6, 36 Stat. 557, 561; Arizona, Sec. 24, 36 Stat. 557, 572). Those two employ language akin to the enabling acts of Nevada and Oregon, considered by this Court in *Heydenfeldt* v. *Daney Gold, etc. Co.,* 93 U. S. 634, and *United States* v. *Morrison,* 240 U. S. 192, respectively. Would defendants contend that the United States again shifted its policy in the cases of New Mexico and Arizona?

What the defendants' argument amounts to is that Wyoming is an exception to the general policy relating to unsurveyed school lands. The defendants offer no special reason or circumstance as to why the Wyoming grant should be construed to give Wyoming a preferred position over its sister states with respect to school lands. The plaintiff is aware of none. And none was presented to or considered by Congress when it had before it the legislation under which Wyo-

ming was admitted. On the contrary, the legislative history of the 1890 Enabling Act shows Wyoming was being given "the usual land grants." H. Rept. No. 39, 51st Cong., 1st sess. p. 26, (1890). As the manager of the bill on the floor of the House put it, "I wish to say to all of these gentlemen and to this House that the bill is exactly, in its land provisions, like all the bills, in respect of those things providing for the admission of the other States, that have been passed by Congress heretofore." 21 Cong. Rec. 2707 (1890).

II

THE DOCTRINE OF THE RAILROAD GRANT CASES IS INAPPLICABLE TO SCHOOL GRANTS.

The defendants seek to invoke the doctrine of the railroad cases (Def. Br. 33–37; 75–85). Clearly there is no occasion to look to the railroad grant cases when this Court repeatedly has declared the law with respect to school grants substantially similar to Wyoming's. It is significant that, although here we are concerned with a school grant, defendants do not rely on the school grant cases but on the railroad grant cases.

The railroad grant cases are inapplicable since the decisions represent constructions of grants clearly distinguishable in purpose and language from the school grants and aimed at effectuating federal policies foreign to school grants. Between 1850 and 1871 Congress subsidized rail-

road construction by lavish grants of public land in order to develop a transportation system and to hasten settlement of the land. After 1871 outright grants seem to have been discontinued. *Krug* v. *S. F. P. R. R. Co.*, Nos. 97, 98, October Term, 1946, decided February 3, 1947, slip op. p. 1; *Great Northern Ry. Co.* v. *United States*, 315 U. S. 262, 273, 274. As a practical matter it was necessary, under the grants which were made, that the railroads' rights to land in the "place", as distinguished from the indemnity, limits of the grants (e.g. *United States* v. *Northern Pacific Ry. Co.*, 311 U. S. 317, 328) should vest as construction progressed, since the granted lands represented the foundation for financing the construction. But in the case of school grants no such consideration applied.

The purpose of the school grant was to provide for a fund for the support of the schools. Cf. *Ross* v. *Trustees of University of Wyoming*, 31 Wyo. 464, 477. Fulfillment of that purpose did not require that the State receive specific lands. It was unimportant to the State whether it received particular land so long as it received the quantity of land and there was no need to sacrifice the Government's right to withdraw land for public purposes. *Heydenfeldt* v. *Daney Gold, etc. Co.*, 93 U. S. 634, 639–640; *United States* v. *Morrison*, 240 U. S. 192, 200.

In this connection defendants make reference to protraction as a substitute for surveys (Def. Br. 82). It may be that in dealing with railroad grants Congress in some instances has authorized protraction, but not for the purpose of passing title. And in the case of school grants Congress authorized protraction of lands included within public reservations, not for the purpose of passing title, but to ascertain "the number of townships" in order that the State might "select indemnity lands" in lieu of sections 16 and 36. Act of February 28, 1891. (Pl. Br., Appendix p. 73.) But nowhere is there authority for the proposition that a claimant may establish a right to an unsurveyed section by substituting protracted lines for a survey of the section lines.[3]

[3] For example see the lines of section 36 drawn by defendants on the diagram following page 12 of their brief. In the legend of that diagram the defendants refer to "Lines protracted by Coleman in 1892," meaning the lines subdividing into quarters, sections in townships other than the township 58–100 in controversy. The exterior lines of those sections previously had been run, measured and marked. Those "Lines protracted by Coleman" were drawn between the quarter section corners established by official survey on the exterior lines of the section. Defendants' protraction of section 36 extends into the unknown. If section 36 can be established by protraction, why not all other sections? It seems rather late in the history of our public lands administration to tamper with the laws and rules governing the survey of public lands.

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III

THE PHRASE "BUT SHALL BE RESERVED FOR SCHOOL PURPOSES ONLY" DID NOT PREVENT THE UNITED STATES FROM WITHDRAWING UNSURVEYED SCHOOL LANDS FOR PUBLIC PURPOSES

1. The phrase appears in section 5 of the Wyoming Enabling Act (Pl. Br., Appendix 68). Section 5 does not contain words of grant—those words are found in section 4. Section 5 deals with "granted" lands. Its prime purpose is to impose limitations on the State in the sale and lease of lands "granted for educational purposes" and the use of the income derived from such sale or lease. Section 5 also provides that "such land," that is, land "granted for educational purposes,"

> shall not be subject to pre-emption, homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

Defendants argue, in effect, that when the words "but shall be reserved for school purposes only" are read with the language of grant in the preceding section 4, they operate as a dedication by the United States of all unsurveyed school sections in Wyoming (Def. Br. 29–43). A similar argument was made and rejected in *Minnesota* v. *Hitchcock,* 185 U. S. 373, 395, and in *United States* v. *Morrison,* 240 U. S. 192, 205–209. To adopt defendants' argument would require a

reversal of policy with respect to practically all school grants, since many of them contain identical language and the rest contain language of a similar purport. It would raise havoc with settled titles.

The phrase should not be lifted from the sentence and section in which it appears and used out of context with what immediately precedes it to create what is charged to be a conflict with language in another section of the act. It must be read in context, having in mind the purposes and scope not only of the section but of the entire act. *Heydenfeldt* v. *Daney Gold, etc. Co.*, 93 U. S. 634, 638. So read, the words "but shall be reserved for school purposes only" mean at most that "such land," that is, land "granted" by section 4 for educational purposes, was not open for settlement under the federal land laws. So construed the phrase takes on meaning in the section in which it appears appropriate to its modest setting in the act.

Even this meaning would be effectual only during the seven-month period between the dates of the Enabling Act of 1890 and the Act of February 28, 1891, c. 384, 26 Stat. 796, since the latter act removed the prohibition against preemption and entry contained in section 5 of the 1890 Enabling Act. The provisions of the 1891 Act have been consistenly construed to subject

unsurveyed school lands, in states having grants identical to Wyoming's, to preemption and entry under the public land laws as well as to withdrawal for public purposes. *Black Hills National Forest,* 37 L. D. 469, 471–472 (1909) (South Dakota); *State of Montana,* 38 L. D. 247, 249–250 (1909). Cf. *Joseph B. Lessman* (Idaho), 44 L. D. 347 (1915); see Lands Decisions cited in *United States* v. *Morrison,* 240 U. S. 192, at page 207. This construction has become a rule of property. And even if there were cause, the Court "should be slow to disturb a ruling of the department of the Government to which is committed the administration of public lands." *California v. Deseret Water, etc. Co.,* 243 U. S. 415, 421. (See also Pl. Br. pp. 38–39 concerning reenactment of identical language in 1934 with knowledge by Congress of prior administrative construction.)

2. The defendants argue that the Act of February 28, 1891 (Pl. Br., Appendix p. 72) cannot operate as an amendment of the enabling act on the theory that a compact between sovereigns cannot be modified without consent (Def. Br. 71–73).[4] Wyoming accepted the 1891 Act as an

[4] The phrase "otherwise disposed of" in section 4 of the Wyoming Enabling Act, standing alone, is sufficient to authorize the withdrawal of unsurveyed school lands for federal reserves. *Wisconsin* v. *Lane,* 245 U. S. 427, 434; *United States* v. *Stearns Lumber Co.,* 245 U. S. 436, 438–439; *United*

amendment to its enabling act when the State took the benefits of the 1891 Act.

Thus, Wyoming did not complain that its enabling act could not be amended by the 1891 Act when it sought lieu land for school sections 16 and 36 included in Yellowstone National Park. Under section 2 of the enabling act Wyoming was not entitled to lieu lands for school sections embraced in the Park. But in 1897 Wyoming sought and received indemnity on its own claim that the 1891 Act amended the 1890 Enabling Act and therefore the State was entitled to lieu land. *State of Wyoming*, 27 L. D. 35, 38 (1898). That accords with the consistent administrative construction of the effect of the 1891 Act. *State of Washington* v. *Kuhn*, 24 L. D. 12, 13 (1897); *State of South Dakota* v. *Thomas*, 35 L. D. 171, 172–173 (1906); *Black Hills National Forest*, 37 L. D. 469, 472–473 (1909); *State of Montana*, 38 L. D. 247, 249–251 (1909); *State of Washington* v. *Geisler*, 41 L. D. 621, 622–625 (1913).

States v. *Morrison*, 240 U. S. 192, 205; *Minnesota* v. *Hitchcock*, 185 U. S. 373. The 1891 Act was intended to effectuate the purpose of Congress that the school grants "have equal operation and equal benefit in all the public land States and Territories." S. Rept. No. 502, 51st Cong., 1st sess., p. 1 (1890); H. Rept. No. 2384, 51st Cong., 1st sess., p. 1 (1890). See discussion in *State of California*, 23 L. D. 423, 424–426 (1896). As an incident to its main purpose of liberalizing, and making uniform, lieu land provisions, the 1891 Act spelled out the pre-existing right of the United States to withdraw unsurveyed school lands for public purposes.

Again, Wyoming made no complaint concerning the inapplicability of the 1891 Act when it invoked and received the benefits of that portion of the Act permitting the State to select land in lieu of a surveyed school section owned by the State but embraced within the limits of a national forest. *Wyoming* v. *United States,* 255 U. S. 489, 493, 494. Certainly the State cannot demand that the 1891 Act be applied for the purpose of reaping a benefit, and subsequently in this litigation insist that the State had not consented to modification of its enabling act. Cf. *Thompson* v. *Savidge,* 110 Wash. 486, 494–495, 499.

CONCLUSION

It is submitted that the United States is entitled to judgment as requested in its opening brief at page 65.

Respectfully,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944.

No. 10, Original.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF WYOMING AND THE OHIO OIL COMPANY,

Defendants.

BRIEF OF DEFENDANTS, STATE OF WYOMING AND THE OHIO OIL COMPANY.

JURISDICTION.

This is an original suit brought by the United States against the State of Wyoming and its lessee, The Ohio Oil Company, in which leave to file a Bill of Complaint was granted on October 9, 1944 (323 U. S. 699). Jurisdiction exists under Section 2 of Article III of the Constitution of the United States, and Section 233 of the Judicial Code (28 U. S. C. A. 341); *United States* v. *Texas*, 143 U. S. 621.

STATEMENT OF THE CASE.

(1) *Pleadings and Factual Background.*

A summary of the pleadings is contained on pages 3-12 of The Master's Report. (R. 433-440.) In its Bill of Complaint, the United States seeks to quiet its asserted title to Section 36, Township 58 North of Range 100 West of the Sixth Principal Meridian, Park County, Wyoming, and for an accounting by Defendants, in regard to the oil and gas produced by the Defendant, The Ohio Oil Company, in its operation of said land for oil and gas purposes, as the lessee of Wyoming.

Section 14 of the Wyoming Territorial Organic Act (July 25, 1868), as introduced, read:

> "And Be It Further Enacted, That when the lands in the said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, Sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same."

By an amendment, the words "That when the lands in said territory shall be surveyed under the direction of the Government of the United States, preparatory to bringing the same into market" were stricken so that Section 14 of Wyoming's Organic Act as it was adopted by Congress read:

> "That Sections numbered sixteen and thirty-six in each township in said territory shall be and the same are hereby reserved for the purpose of being applied to public schools in the state or states hereafter to be erected out of the same."

Sections 4 and 5 of Wyoming's Enabling Act (July 10, 1890) provide in part:

> "That Sections numbered 16 and 36 in every township of said proposed state, * * * are hereby granted to said state for the support of common schools * * * and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

On March 7, 1892, Wyoming requested that surveys be made of certain townships, including the fractional Township 58 in question, for the purpose of identifying its "place" school land sections and as a basis for the selection of its "quantity school lands". (R. 188.) On March 8, 1892, a contract was entered into between the United States and Augustus L. Coleman whereby he was required to "well, truly, and faithfully survey, mark, and establish * * * the exterior and subdivisional lines of townships 57 north, ranges 97, 98, 99, 100, 101 and 102 west, and of fractional townships 58 north, ranges 97, 98, 99, 100, 101 and 102 west of the 6th Principal Meridian, Wyoming, and that he will complete these surveys, in the manner aforesaid, * * *" and in which he was informed of the aforesaid purpose and reason for said surveys. (R. 188B-191.) On August 5, 1892, the Commissioner of the General Land Office was advised that Coleman had completed the surveys covered by his contract and that the same were ready for examination in the field. On August 11, 1892, the United States Surveyor General for the State of Wyoming was directed to make a personal inspection of said surveys in the field. Pursuant to said instructions, the Surveyor General made such inspection and prepared field notes therefrom. On November 26, 1892, the plats, transcripts and field notes made by Coleman in connection with his survey

and the transcripts and notes made by the Surveyor General in connection with his examination in the field of the Coleman Surveys, were filed in the Office of the Commissioner of the General Land Office and submitted to him for his acceptance or approval, and on December 20, 1892, the Commissioner of the General Land Office, being fully advised and acting within his authority, accepted and approved said surveys. (R. 195-235.) R. 457-458, Master's Findings 4 to 8, inclusive.

The accepted Coleman field notes and plats in regard to said Township 58 North, Range 100 West, showed the establishment of the exterior boundaries of said Township and also the setting of the corner and quarter corner monuments on said exterior boundaries. As to said Section 36 of said Township 58, said accepted field notes and plats showed the establishment of the Southeast corner thereof, the quarter section point to the North and the Northeast corner thereof, and that Westerly from the Southeast corner there was established a quarter corner and the Southwest corner; that said field notes and plats also show that Coleman did not make a subdivisional survey of said Township 58, and that his said field notes and plats did not establish the interior lines of said Township. (R. 443 and Finding No. 9, R. 459.)

A subdivisional survey of Township 58 was authorized on July 14, 1914, and was accepted by the Commissioner of the General Land Office on July 27, 1916.

On December 6, 1915, about seven months before the acceptance of said subdivisional survey of said Township 58, the President included all of said Section 36, Township 58, in the withdrawal order which created Petroleum Reserve No. 41.

(2) *Analysis of Issues Submitted to the Master.*

Under the pleadings when the case came on for hearing before The Master, the asserted title by the United States to the Section 36 involved herein was founded upon three primary propositions, *i. e.*:

(1) That Wyoming did not under the school land grant provisions of its Enabling Act, acquire any vested, legal or equitable right to or interest in said land;

(2) That Wyoming did not, under the school land grant provisions of its Enabling Act, plus the accepted Coleman Survey (which on December 20, 1892, established the exterior boundaries of Township 58) acquire any vested, legal or equitable right to or interest in said land;

(3) That in any event, if propositions (1) and (2) are not valid, then the asserted title of the United States to Section 36 is good because the land was "known mineral land" on and prior to July 10, 1890, and on and prior to December 20, 1892, and that "known mineral lands" were excepted from Wyoming's School Land Grant.

At the hearing, the United States refused to offer any evidence in support of its tendered issue as to the "known mineral character" of the land and "for the record" stated to The Master that it was "willing to submit the title issue" upon its basic contention that Wyoming, prior to the accepted subdivisional survey of Township 58 (July 27, 1916), had acquired no legal or equitable right, title or interest to or in Section 36, and that therefore the land was subject to and was withdrawn by Petroleum Withdrawal Order No. 41, and that this constituted a disposition of the land prior to the vesting in Wyoming of any legal or equitable right, title or interest to or in said land.

As the case was submitted to The Master, the claim of Plaintiff to Section 36 rested solely upon the narrow and

technical contention that a complete and perfect legal title to Section 36 had not vested in Wyoming prior to Withdrawal Order No. 41, because prior to said withdrawal order there had been no accepted United States Subdivisional Survey of Township 58, whereby the lines of Section 36 were created and established and that until such complete and perfect legal title vested in Wyoming as the result of such an accepted subdivisional survey of Township 58, the United States had unlimited power and authority to make such a disposition of Section 36 as would prevent Wyoming from ultimately acquiring legal title thereto.

The Master accepted as the controlling factor a fictional issue as to the vesting of legal title instead of the actual issue which concerned the vesting, in Wyoming, of an equitable right, title and interest.

It is the contention of Wyoming that an equitable right, title to or interest in Section 36 vested in it long prior to the Withdrawal Order of December 6, 1915. This contention is based upon:

(a) The school land grant provisions of its Enabling Act;

(b) The school land grant provisions of its Enabling Act, plus the acceptance of the United States Survey in 1892 of the exterior boundaries of Township 58, which established the existence and location of the Section 36 in question within said Township 58.

(3) *Defendants' Objections to The Master's Findings of Fact and Conclusions of Law.*

We have no objection to the discussion, as far as it goes, by The Master, on pages 8 to 20 of his Report, of the Act of February 26, 1859, and Section 14 of the Wyoming Territorial Organic Act with its legislative history,

and the pertinent provisions of the school land grant of Wyoming's Enabling Act.

Nor do we have any objection to The Master's Findings of Fact concerning the accepted United States Survey in 1892 of the exterior boundaries of Township 58, and the establishment thereby of the exterior boundaries of Township 58 and Section 36, including the exterior corners and quarter corners of said section.

Objection is made to The Master's Third Finding of Fact which is a general finding in favor of Plaintiff as to ownership of Section 36.

Objection is also made to The Master's Ninth Finding of Fact insofar as it finds that the accepted survey of the exterior boundaries of Township 58 in 1892 did not, in equity, identify or make susceptible of identification, Section 36.

Objection is also made to The Master's Finding of Fact Number 12, on the ground that Section 36 was not subject to withdrawal on December 6, 1915, because of Wyoming's then existing equitable right, title or interest therein.

Defendants' objections, numbered 4 to 10 inclusive to The Master's Findings of Fact, concern the alleged error of The Master in failing and refusing to make designated Findings of Fact.

Objections 4 to 6 inclusive are intended to preserve and present the contention that Wyoming acquired a vested equitable right, title or interest to Section 36, predicated alone upon the said provisions of the school land grant of its Enabling Act.

Objections 7 to 10 inclusive to The Master's Findings of Fact, are intended to preserve and present Wyoming's contention that it acquired a vested equitable right, title

or interest in Section 36 by reason of the provisions of the school land grant of its Enabling Act, plus the accepted United States Survey in 1892 of the exterior boundaries of Township 58, which established the existence in and location of the Section 36 in question within said Township 58.

Objection 11 is directed to the Master's failure to find specially that a United States Survey of the exterior boundaries of Township 58 was accepted by the Commissioner of the General Land Office on December 20, 1892. This fact, which is of course established by the evidence, has not been in dispute since Plaintiff filed its Petition for Leave to file its Complaint, wherein it is stated:

> "While Section 36 was not surveyed until 1916, the township in which it lies was surveyed prior to that date. The north line of the township is a part of the Montana-Wyoming state line surveyed in 1880. The east, south, and west boundaries of the township were run in 1892 and the survey was accepted by the Commissioner of the General Land Office on December 20, 1892.
>
> "The State, it is believed, may contend that title to Section 36 passed to it upon acceptance of the 1892 survey of the township and therefore section 36 was not 'public land' available for withdrawal by the President under authority of the Act of June 25, 1910. * * *" (Page 3, of the Motion for Leave to File Complaint and Complaint, R. 2.)

Objections 12 and 13 concern the refusal of The Master to find that Section 36 was not known mineral land on or prior to July 10, 1890, (the date of Wyoming's Enabling Act) or in any event, was not known mineral land on or prior to December 20, 1892, (the date of acceptance of the survey of the exterior boundaries of Township 58).

Objection 14 to The Master's Findings of Fact, concerns the refusal of The Master to find that Wyoming has been

the owner of a vested equitable right, title and interest in Section 36, since July 10, 1890, or in any event, has been the owner of such vested equitable right, title or interest since December 20, 1892.

Objection No. 15 to The Master's Findings of Fact, concerns the refusal of The Master to find that Wyoming is now and at all times since July 27, 1916, (the date of the acceptance of the subdivisional survey of Township 58) has been the owner in fee simple of section 36 with relation back.

Objections to The Master's Conclusions of Law, correlated to the objections to The Master's Findings of Fact, have been filed.

Upon the issue as to the ownership of Section 36, The Master made but one conclusion, which was a general one, in favor of Plaintiff, and to which Defendants have objected.

The objections Numbered 1 to 5 inclusive to The Master's Conclusions of Law, are directed to the alleged error of The Master in refusing to conclude that Wyoming, under the provisions of the school land grant of its Enabling Act, acquired such an equitable right, title or interest in Section 36 as was sufficient in equity to bar the United States from thereafter making any disposition of said land, which would prevent Wyoming's vested equitable right, title or interest from ripening into a legal title upon an approved subdivisional survey of Township 58.

The objections Numbered 6 to 8 inclusive to The Master's Conclusions of Law, are directed to the alleged error of The Master in refusing to conclude that the said provisions of the school land grant and reservation of Wyoming's Enabling Act, plus the accepted 1892 survey of the exterior boundaries of Township 58, and the consequent location and identification of Section 36, vested in

Wyoming upon the date of the acceptance of such survey such a vested equitable right, title and interest in Section 36 as would thereafter, in equity, bar the United States from making any disposition of Section 36 which would prevent Wyoming's vested equitable right, title and interest from ultimately ripening into a legal title upon the acceptance of a subdivisional survey of Township 58.

Objection Number 9 to The Master's Conclusions of Law is directed to the alleged error of The Master in refusing to conclude that Section 36 was not "known mineral land" on or prior to December 20, 1892.

Objection Number 10 to The Master's Conclusions of Law, is directed to the refusal of The Master to conclude that Plaintiff was estopped from asserting ownership of Section 36 against the Soverign State of Wyoming.

Objections Numbered 11 and 12 to The Master's Conclusions of Law, are directed to the refusal of The Master to conclude that Wyoming's equitable right, title or interest in Section 36 ripened into a legal title thereto upon the acceptance by the Commissioner of the General Land Office on July 27, 1916, of a subdivisional survey of Township 58.

OBJECTIONS TO BE URGED.

All objections to The Master's report will be urged under what are deemed to be convenient and appropriate heads and subheads with an indication of the objection or objections involved therein.

CHRONOLOGY.

July 25, 1868—Wyoming Organic Act.
(Sections 16 and 36 "reserved for the purpose of being applied to public schools.")
Legislative history shows change in policy supporting wording.

March 1, 1877—Decision in *Heydenfeldt* v. *Daney Gold etc. Co.*, 93 U. S. 634.

Dec. 12, 1887—Wording identical to Wyoming's Enabling Act first used in public land grant.
(S. 185, 50th Congress, First Session, p. 33, and legislative history down to passage of substitute bill on Feb. 22, 1889, being the Enabling Act for the States of Washington, Montana, North Dakota, and South Dakota.)

Nov. 5, 1889—Constitution of Wyoming adopted, effective upon ratification thereof by Congress in Enabling Act next referred to.

July 10, 1890—Wyoming Enabling Act.
(Sections 16 and 36 "are hereby granted to said State for the support of common schools * * * and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.")

March 7, 1892—Wyoming requests United States to survey and subdivide (amongst others) Townships 57 and 58 North, Ranges 99 and 100 West, to identify school sections therein.

March 8, 1892—Government enters into contract with Coleman for survey requested.

March 11, 1892—Coleman informed that "survey of the lands * * * requested by the State Board of Control, a Board authorized by the Legislature to select the land donated to the State by the General Government * * *."

April 11, 1892—Commissioner of General Land Office advised of State request.

April 28, 1892—Coleman contract approved by Commissioner.

Aug. 11, 1892—Surveyor General authorized to make personal inspection of surveys executed by Coleman.

Nov. 26, 1892—Surveyor General forwards Coleman surveys and plats to Commissioner, together with field examination.

Dec. 20, 1892—Commissioner of General Land Office accepts surveys as follows: "* * * said surveys are considered satisfactory, and are hereby accepted * * *."

Jan. 5, 1893—Commissioner certifies Coleman account for payment as certified by Surveyor General "* * * which has been compared by this office with the approved plat of the surveys thus executed and found correct; * * *"

July 7, 1914—Survey in field commenced by Davis.

July 14, 1914—Subdivisional survey of Township 58 North authorized by Commissioner.

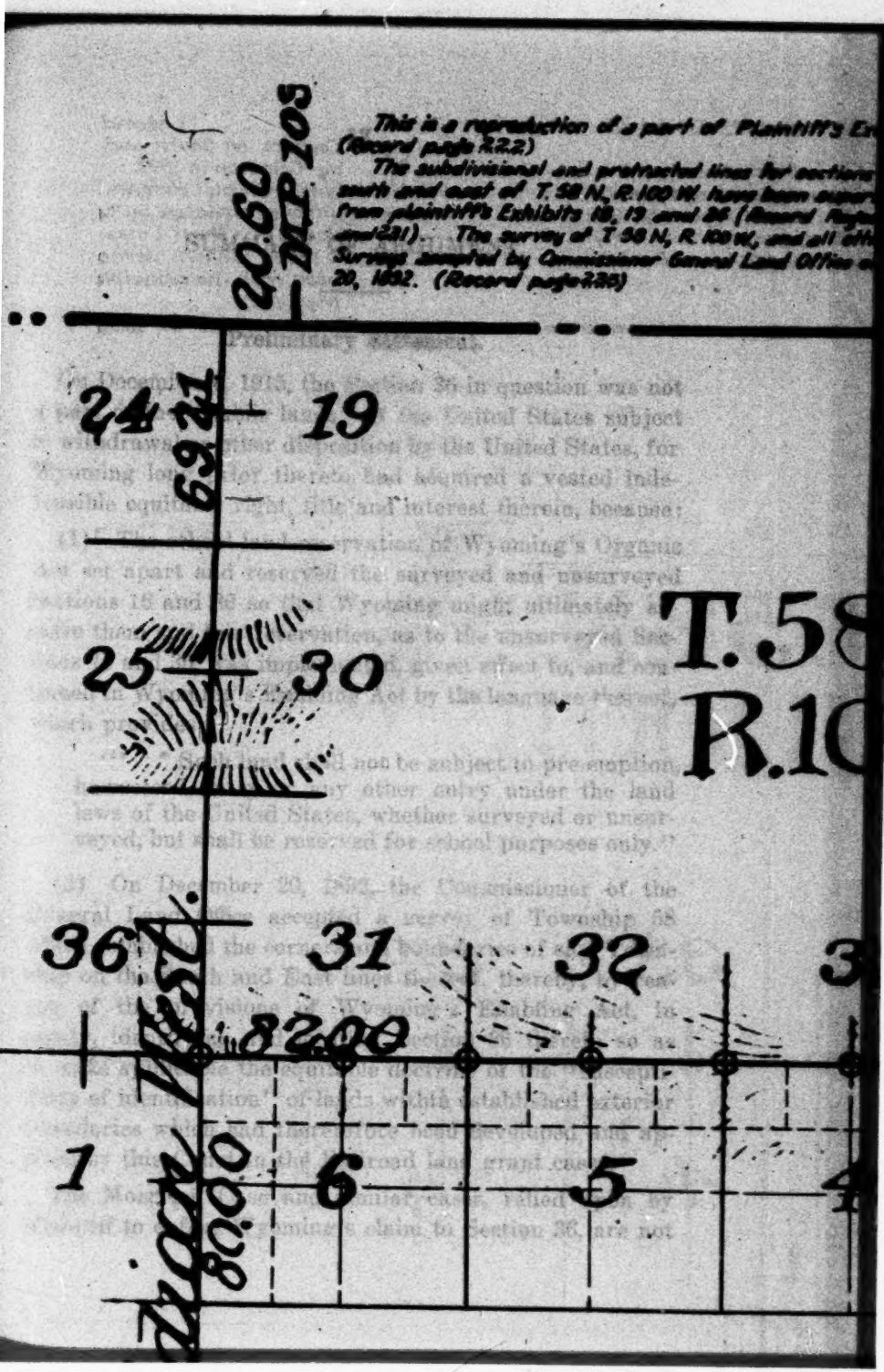
Aug. 24, 1914—Davis survey completed in field.

Dec. 6, 1915—Presidential withdrawal for classification and in aid of legislation, including therein as "unsurveyed" Section 36, T. 58 N., R. 100 W.

Dec. 9, 1915—Subdivisional survey approved by U. S. Surveyor General and forwarded to Commissioner.

July 27, 1916—Subdivisional survey accepted by Commissioner.

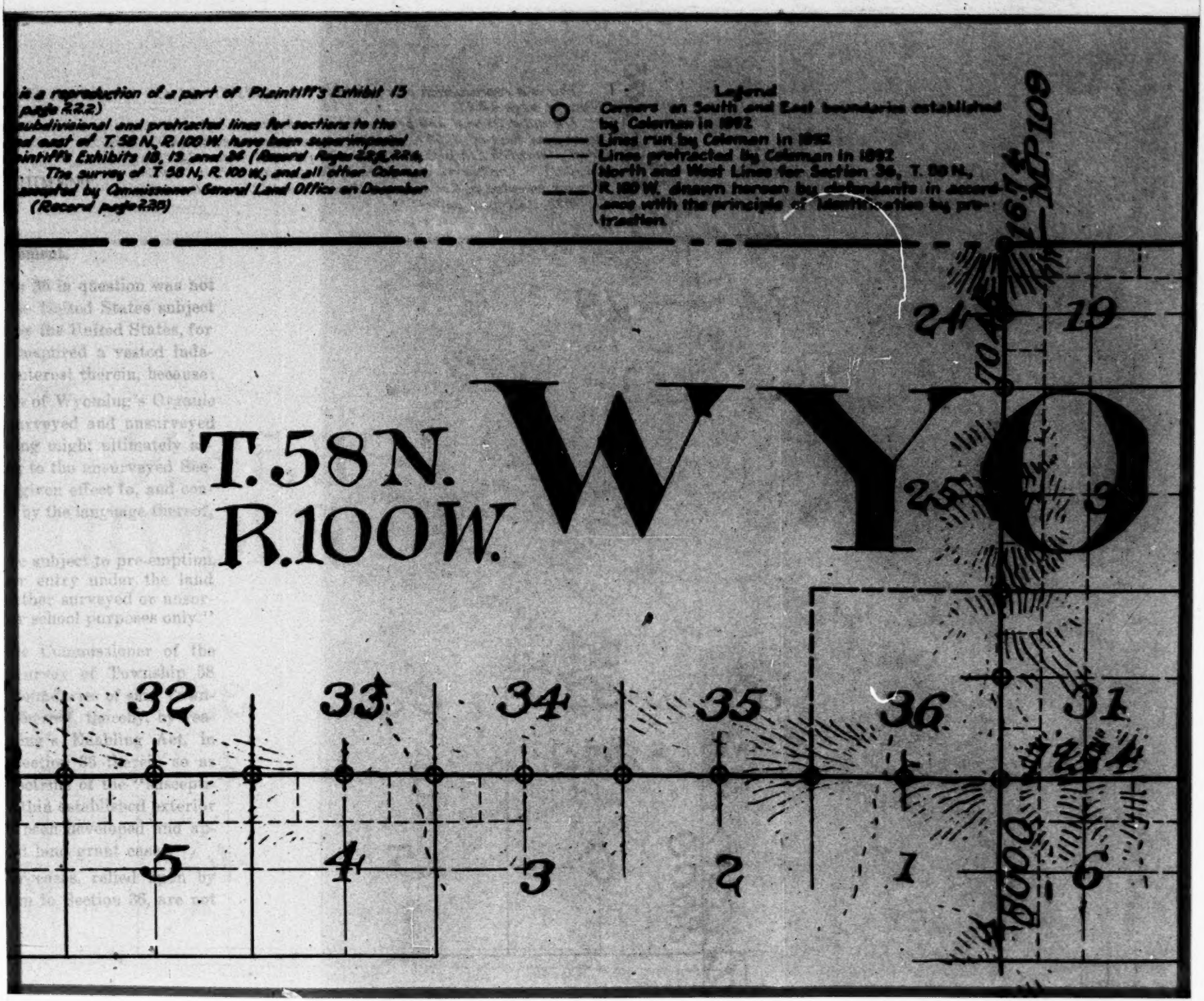
Feb., 1917—Ohio commenced operations under lease from Wyoming.


This is a reproduction of a part of Plaintiff's Ex
(Record page 222)
The subdivisional and protracted lines for sections
south and east of T. 58 N., R. 100 W. have been
from plaintiff's Exhibits 18, 19 and 26 (Record Pa
and 231). The survey of T. 58 N., R. 100 W., and all
Surveys accepted by Commissioner General Land Office
20, 1892. (Record page 235)
20.60
MEP 105
24
19
69.41
25
30
T. 58
R. 10
36
31
32
3
82.00
80.00
1
6
5
4

is a reproduction of a part of Plaintiff's Exhibit 15
page 222.)
subdivisional and protracted lines for sections to the
st east of T. 58 N., R. 100 W. have been superimposed
intiff's Exhibits 18, 19 and 36 (Record Pages 223, 224,
. The survey of T. 58 N., R. 100 W., and all other Coleman
accepted by Commissioner General Land Office on December
(Record page 238)

Legend

- Corners on South and East boundaries established by Coleman in 1892
- Lines run by Coleman in 1892
- Lines protracted by Coleman in 1892
- North and West Lines for Section 36, T. 58 N., R. 100 W. drawn hereon by defendants in accordance with the principle of identification by protraction



SUMMARY OF ARGUMENT.

Preliminary Statement.

On December 6, 1915, the Section 36 in question was not a part of the "public lands" of the United States subject to withdrawal or other disposition by the United States, for Wyoming long prior thereto had acquired a vested indefeasible equitable right, title and interest therein, because:

(1) The school land reservation of Wyoming's Organic Act set apart and reserved the surveyed and unsurveyed Sections 16 and 36 so that Wyoming might ultimately acquire them and this reservation, as to the unsurveyed Sections 16 and 36, was implemented, given effect to, and continued in Wyoming's Enabling Act by the language thereof, which provides:

> "* * * Such land shall not be subject to pre-emption, homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

(2) On December 20, 1892, the Commissioner of the General Land Office accepted a survey of Township 58 which established the corners and boundaries of said Township on the South and East lines thereof, thereby, by reason of the provisions of Wyoming's Enabling Act, in equity, identifying and locating Section 36 therein so as to make applicable the equitable doctrine of the "susceptibility of identification" of lands within established exterior boundaries which had theretofore been developed and applied by this Court in the Railroad land grant cases.

The Morrison Case and similar cases, relied upon by Plaintiff to defeat Wyoming's claim to Section 36, are not

in point because the school land reservation of the Organic Act, which preceded the Enabling Acts involved in those cases, only took effect after survey, and the school land grants of said Enabling Acts were in keeping with the policy of the said Organic Act reservations which looked to them in that they did not contain language of any type or character which imposed any limitation on the power of disposition by the United States prior to survey; and in no instance had there been an accepted survey of the exterior boundaries of the township wherein was situated the designated school section involved.

A complete and exhaustive investigation of the authorities discloses that the fundamental factual situation and the pivotal legal principles of statutory construction and the vesting of equitable rights, presented to and ruled upon by this Court in the Railroad land grant cases, are strictly analogous to the controlling questions presented in the instant case. In no other line of cases has this Court considered and construed substantially similar statutory language in relation to the establishment of a vested equitable right in unsurveyed lands by reason of the establishment and existence of the exterior boundaries of the larger tract within which such land is situated.

A just and well-founded decision in the instant case may only be reached through the application of the logic and reasoning of analogous cases. In no case has the significance of statutory language substantially similar to the language of Section 5 of Wyoming's Enabling Act been construed by this Court in a school land grant case and never by any court has the significance of this language been considered where there was involved an asserted vested equitable right to an unsurveyed designated school land section predicated upon the fact that there had been an accepted United States Survey of the exterior boundaries of the township within which said school section was situated.

AS TO TITLE.

I

On July 10, 1890, Wyoming, Under the Provisions of Its Enabling Act of That Date, Became Vested in Equity With an Indefeasible Right, Title and Interest in School Section 36 Which Could Not Thereafter Be Divested by Any Act on the Part of the United States.

1. The school land grant and reservation of Wyoming's Enabling Act, should be construed in the light of the legislative history of the school land reservation provision of its Organic Act.
2. Wyoming's Enabling Act is a law as well as a grant and such effect must be given to it as would carry out the intent of Congress. This is true regardless of whether or not at the time of such law and grant there existed a present power of identification of the land covered by the grant.
3. Under the decisions of this Court, sections 4 and 5 of Wyoming's Enabling Act, constituted a congressional reservation of all unsurveyed Sections 16 and 36, on behalf of Wyoming, for school purposes and by said reservation the Section 36 herein involved, was set apart and appropriated to Wyoming for said designated use or purpose and did not thereafter constitute or form any part of the "public lands" of the United States, subject to disposition by the officers or agents of the United States under the land laws of the United States.
4. The validity of Wyoming's contention has been sanctioned and supported by the Department of the Interior and by the Courts in decisions construing and discussing identical provisions of the Enabling Acts of the states of Idaho and Washington.
5. *United States* v. *Morrison*, 240 U. S. 192, analyzed and contrasted with, and distinguished from, the instant case.

6. Discussion of Plaintiff's contentions based on Sections 4 and 5 of Wyoming's Enabling Act, Section 6 of the Act of August 9, 1888, and the Act of February 28, 1891.

(Defendants' objections numbered 1 and 3, and 4 to 7 inclusive, and 14(a), to the Master's Findings of Fact, and objections numbered 1 to 6 inclusive, to the Master's Conclusions of Law.)

II.

On December 20, 1892, Upon the Acceptance by the Commissioner of the General Land Office of the Coleman Survey of Township 58, the Exterior Boundaries and Corners of Said Township Were Fixed and Established and the Exterior Boundaries, Corners and Quarter Corners Were Marked So That Wyoming Under the Provisions of Its Enabling Act, Became Vested in Equity With an Indefeasible Right, Title and Interest in School Section 36 Which Could Not Thereafter Be Divested by Any Act on the Part of the United States.

(Defendants' objections numbered 1, 2, 3 and 8 to 11 inclusive, and 14 to the Master's Findings of Fact, and objections numbered 1 and 6 to 8 inclusive and 12 to the Master's Conclusions of Law.)

III.

The Legal Title to Section 36 Vested in Wyoming on July 27, 1916, When the Commissioner of the General Land Office Accepted the Davis Subdivisional Survey of Township 58.

(Defendants' objection Number 15 to the Master's Findings of Fact, and objection Number 11 to the Master's Conclusions of Law.)

IV.

Wyoming Was and Is Entitled to a Finding of Fact and a Conclusion of Law to the Effect That Section 36 Was Not "Known Mineral Land" on or Prior to December 20, 1892.

(Defendants' objections numbered 12 and 13 to the Master's Findings of Fact, and objection Number 9 to the Master's Conclusions of Law.)

AS TO THE ACCOUNTING PHASE OF THE CASE IN THE EVENT IT SHOULD BECOME OPERATIVE.

1. Plaintiff concedes that The Master correctly disposed of all accounting issues and these questions are settled in the event the Court should determine the title issue in favor of Plaintiff and should also confirm the disposition made by The Master of the question of Defendants' good faith. If the Court finds that the record does not support the Finding of The Master as to the Defendants' good faith, the case should be referred back to The Master for further hearing on this point.
2. The Master properly refused to recommend a joint and several judgment against the Defendants for the royalties paid Wyoming because the existing deficit of $64,479.74 exceeds the royalty payments by $47,173.44.

ARGUMENT.

I.

On July 10, 1890, Wyoming, Under the Provisions of Its Enabling Act of That Date, Became Vested in Equity With an Indefeasible Right, Title and Interest in School Section 36 Which Could Not Thereafter Be Divested by Any Act on the Part of the United States.

1. *The school land grant and reservation of Wyoming's Enabling Act, should be construed in the light of the legislative history of the school land reservation provision of its Organic Act.*

Prior to the Wyoming Territorial Organic Act of July 25, 1868, the Territorial Organic Acts had contained a school land reservation provision to the effect that the designated land, after survey by the United States, should be reserved for school purposes.

The school land reservation provision of the Oregon, Minnesota and Wisconsin Organic Acts are in substance identical and are typical of the form of the school land reservation provision used by Congress prior to the organization of the Territory of Wyoming.

In *U. S.* v. *Morrison*, 240 U. S. 192, the Court, in referring to and quoting the school land reservation provision of Oregon's Organic Act, said:

> "* * * In the case of Oregon, the following provision had been made in establishing the territorial government (act of August 14, 1848, chap. 177, Sec. 20, 9 Stat. at L. 323, 330);
>
> "'That when the lands in the said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same

into market, sections numbered sixteen and thirty-six in each township in said territory shall be and the same is hereby reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same.'"

Obviously, under this Act there was no reservation until after there was an approved survey.

In *Minnesota* v. *Hitchcock*, 185 U. S. 373, the Court, in referring to the school land reservation provision of the Minnesota Organic Act, said:

"Turning to the legislation of Congress in respect to school lands in Minnesota, the clause in the act establishing the territorial government has only this significance. It provided that when the lands in the territory should be surveyed sections Nos. 16 and 36 'shall be and the same are hereby reserved', for the purpose of being applied to schools. But the agreed statement shows that these lands were not surveyed until after the act of January 14, 1889, and the agreement with the Indians made in pursuance thereof, and approved by the President March 4, 1900. * * *"

Here again it is plain that there was no reservation until after there had been a survey.

This form of school land reservation constituted a recognition of and acquiescence in the general policy established by the provisions of the Act of February 26, 1859, which provided in part:

"Where settlements, with a view to preemption, have been made before the survey of the lands in the field, which are found to have been made on sections sixteen or thirty-six, those sections shall be subject to the preemption claim of such settler; and if they, or either of them, have been or shall be reserved or pledged for the use of schools or colleges in the State or Territory in which the lands lie, other lands of like quantity are appropriated in lieu of such as may be patented by pre-emptors; * * *" (43 U. S. C. A. Sec. 851, p. 108.)

The Act of February 26, 1859, was in effect at the time of the enactment of the Wyoming Territorial Organic Act. Congress, however, in organizing and creating the Wyoming Territory, refused to follow this policy, because experience had disclosed that school land reservations made pursuant to said policy were working out to the detriment of the territories and states created therefrom, in that by reason of the surveys being long delayed, a large part of the most productive and valuable land was lost to the territory and state. This seems to be conclusively established by the legislative history of the school land reservation provisions of Wyoming's Organic Act.

Section 14 of Wyoming's Organic Act, as introduced, read as follows:

> "And Be It Further Enacted, That when the lands in the said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby reserved for the purpose of being applied to schools in said Territory, and in the States and Territories hereafter to be erected out of the same."

This language follows literally the school land reservation provision of Oregon's Organic Act construed in *United States* v. *Morrison, supra.* The legislative history of the Wyoming Organic Act shows that Section 14 as thus introduced was amended by striking out that part of the section which made the effectiveness of the reservation dependent upon a prior survey.

The discussion which preceded the amendment and the legislative history of the amendment is found in Volume 39, pages 2792 to 2802, Part III, *Congressional Globe, 2nd Edition,* 40th Congress and reads in part as follows:

> "Mr. Pomeroy: I desire to offer another amendment in the same section. As it now stands the six-

teenth and thirty-sixth sections cannot be reserved until after the survey, and that will take a long time, and in the meanwhile every sixteenth and thirty-sixth section that is valuable will be held by a squatter against the interest of the public schools; but if the section can be amended, as I suggest, the sixteenth and thirty-sixth sections will be reserved from the date of the act and can be held only for the purposes herein reserved, that is, for public schools. I move to strike out after the word 'that', in the first line, the words 'when the lands in said Territory shall be surveyed, under the direction of the Government of the United States, preparatory to bringing the same into market;' so that the section will read:

"'That sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to public schools in the State or States hereafter to be erected out of the same.'

"That reserves them now from the passage of the act; but the section as it stands only reserves them after survey, and that will be too late; the best of them will be gone then. I therefore move to strike out the words which I have indicated.

"Mr. Williams: How can you determine where the sixteenth and thirty-sixth sections are unless the lands are surveyed?

"Mr. Pomeroy: You cannot determine it.

"Mr. Conness: You cannot determine it in either case.

"Mr. Williams: I do not know but that the amendment is right; but it seems to me that under it a person might go into this Territory and settle upon the land and make valuable improvements, as they do in all new countries, and when the land is surveyed, if the man is found to be upon the sixteenth or thirty-sixth section his land and his improvements are all taken from him; he is turned out of doors.

"Mr. Pomeroy: If he is on the sixteenth or thirty-sixth section then he settles with the superintendent

or trustees of the schools, whoever they may be, as appointed by the legislature. The Government cannot drive him off. He must settle with the school interests of his State.

"Mr. Conness: He holds it under them.

"Mr. Pomeroy: And he has the opportunity of buying it under such regulations as the State may prescribe after it becomes a State; but unless this amendment be made he can hold the sixteenth and thirty-sixth section against the interest of the schools and in defiance of the State.

"The amendment was agreed to."

"The bill was reported to the Senate, as amended, and the amendments were concurred in."

"The amendments were ordered to be engrossed, and the bill to be read a third time. The bill was read the third time, and passed."

Section 14 of the Act, as enacted, after said amendment reads as follows:

"*And Be It Enacted,* That sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby reserved for the purpose of being applied to public schools in the state or states hereafter to be erected out of the same."

Attention is particularly directed to that portion of Mr. Pomeroy's remarks in which he stated that a person who settled during territorial days on a Section 16 or 36 prior to survey would be compelled to settle with the state, but that he would have an "opportunity of buying it under such regulations as the state may prescribe after it becomes a state."

In this connection it is not only interesting, but important to note that the Wyoming Constitutional Convention included the purchase regulation referred to by Mr. Pomeroy as a part of Section 1, Article 18 of the Constitution of Wyoming.

Section 1, Article 18 of the Wyoming Constitution reads in part:

> "The State of Wyoming hereby agrees to accept the grants of land heretofore made, or that may be hereafter made by the United States to the state, for educational purposes. * * * Such lands shall be disposed of only at public auction to the highest responsible bidder, after having been duly appraised by the land commissioners, at not less than three-fourths of the appraised value thereof, and for not less than $10 per acre; provided, that in case of actual and bona fide settlement and improvement thereon at the time of the adoption of this constitution, such actual settler shall have the preference right to purchase the land whereon he may have settled, not exceeding 160 acres at a sum not less than the appraised value thereof, and in making such appraisement the value of improvements shall not be taken into consideration."

As Section 1 of Article 18 was introduced the provision giving settlers a preference right to purchase did not appear therein, but was included by amendment.

The debate which led to the inclusion of this provision appears in the *Journals and Debates of the Constitutional Convention of Wyoming*, at pages 753 to 758 and reads in part as follows:

> "Mr. Clark: I have an amendment which I wish to offer to this section. That would more properly come in two amendments, and I want to state the object of the amendments before offering them. In the western part of the territory a great many people have settled on these school lands, in some cases long before the government surveys were run. They live there and own improvements on the land, and this amendment is offered for the protection of those who have made actual settlement and improvements upon these school lands, and is for the purpose of giving them a previous right to purchase. * * *"
>
> "Mr. Holden: I think the state should be as gener-

ous in this matter as the United States has been. They provide by law where a party settled upon unsurveyed land that when this land shall be surveyed that the man who settled there before the survey shall have the prior right to buy. In that case the settler has ninety days to perfect his entry, and it seems to me the state should be as generous as the United States has been. Now, I know myself of quite a number of cases where parties have settled on school lands, sixteen or thirty-six years ago. They have made valuable improvements; some of them are of a character they could not remove, irrigating ditches for instance, and it seems to me that the board of appraisers should seek to make the value of these lands so that the party residing there should have the prior right to buy at that price. It would be an injustice to deprive these men of that right.

"Mr. Hoyt: * * * I think there should be a distinction between those who went upon the lands without knowing they were school lands, and those who knew they were. I think that the state is bound to see that it gets the most it can out of these lands, but I think some deference should be paid to those who are already on them.

"Mr. Holden: I would like to say that under the laws of the United States now in operation our territory has leased many of its lands. Many parties had made improvements before they were surveyed, and under the regulations adopted by our territorial authorities, the preference right was given to those who had occupied those lands and improved them, and now believing that they would have the prior right to buy secured to them, they have gone on and made valuable improvements there. Now should they be deprived of their labor to this extent? I think not. They have leased these lands and pay all that the county commissioners require them to pay and will do so until such time as the territory will permit them to buy them."

It is evident that the members of the Wyoming Constitutional Convention considered that the school land reservation of the Organic Act was intended to reserve and with-

draw from settlement or entry the unsurveyed Sections 16 and 36 of the Territory and that they were familiar with the Congressional Debate which conclusively established such intent and purpose; such understanding was disclosed to Congress by the inclusion in the proposed Wyoming Constitution of that portion of Section 1, Article 18, which is above referred to.

Congress, by the Enabling Act, confirmed and acquiesced in such disclosed understanding of the Wyoming Constitutional Convention by that portion of said Enabling Act which reads:

> "* * * and that the constitution which the people of Wyoming have formed for themselves be, and the same is hereby, accepted, ratified, and confirmed."

Before the Master, Plaintiff was successful in brushing aside what seems to us the paramount significance of the established intent and purpose of Congress in enacting the school land reservation provision of Wyoming's Organic Act, by the bald assertion that the Organic Act was not a grant and that Wyoming's rights are necessarily controlled by the terms of its Enabling Act.

If the terms and conditions of the grant and reservation of the Enabling Act were clearly different in any substantial particular from the terms, policy and conditions of the Organic Act reservation, then admittedly the provisions of the Enabling Act would be controlling.

Here, however, we have a controversy as to the proper construction or interpretation of the provisions of the school land grant of an Enabling Act which admittedly contains language obviously designed and used as a means of carrying into effect the terms and policy of a preceding Organic Act school land reservation.

The basic proposition involved here is the intention and purpose of Congress in including in Wyoming's Enabling

Act the provision: "* * * and such lands shall not be subject to pre-emption, homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only." Certainly, if it appears, as it clearly does, that this language is used by Congress with the intent and for the purpose of carrying into effect the terms and policy of the Organic Act school land reservation, then the intent and purpose of Congress in making such Organic Act reservation, which is established by its legislative history, determines the construction that must be given to the above quoted language of Wyoming's Enabling Act.

Once it is determined that the intent and purpose of Congress in enacting the school land reservation provision of Wyoming's Organic Act was that the unsurveyed as well as the surveyed Sections 16 and 36 were reserved for school purposes, then the intention of Congress to carry over this reservation into Wyoming's Enabling Act without any substantial change or modification, is made manifest by the fact that the language of the school land grant of Wyoming's Enabling Act, is obviously designed for and adapted to such purpose and can only be logically and reasonably construed upon this premise.

Under the circumstances presented, the authorities clearly sanction and support the use of the legislative history of the school land reservation provision of Wyoming's Organic Act in construing the provisions of the school land grant of Wyoming's Enabling Act.

50 Am. Jur. 354:

> "In the enactment of a statute, earlier acts on the same subject are generally presumed to have been in the knowledge and views of the legislature which is regarded as having adopted the new statute in the light thereof and with reference thereto. Therefore, in the construction of a statute, reference may be made to earlier statutes on the subject, which are regarded

as in *pari materia* with the later statute. *A comparison of the prior law with the present is considered helpful in determining the true intent of the legislature.* * * *"* (Emphasis added.)

In *St. Louis I. M. & S. R. Co.* v. *United States,* 251 U. S. 198, the Court said:

"* * * But, Congress must be presumed to have known of its former legislation in the Acts of 1853 and 1866, and to have passed the new laws in view of the provisions of the legislation already enacted. * * *"

In *Fussell* v. *Gregg,* 113 U. S. 550, the Court said:

"The provisions of the third section are based on the same policy, and are similar to those of the act of March 3, 1855, *ubi supra,* and must receive the same construction, namely, * * *"

In *Penn Mutual Life Ins. Co.* v. *Lederer,* 252 U. S. 523, the Court said:

"That such was the intention of Congress is confirmed by the history of the noninclusion clause (c) above. The provision in the Revenue Act of 1913, for taxing the income of insurance companies is in large part identical with the provision for the special excise tax upon them imposed by the Act of August 5, 1909; * * *"

2. *Wyoming's school land grant is a law as well as a conveyance and such effect must be given to it as would carry out the intent of Congress. This is true regardless of whether or not at the time of such grant and law there existed a present power of identification of the land covered by the grant.*

Sections 4 and 5 of Wyoming's Enabling Act, provide in part:

Section 4:

"That Sections numbered 16 and 36 in every town-

ship of said proposed state, * * * are hereby granted to said state for the support of common schools. * * *" Section 5:

"* * * and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

In construing Wyoming's Enabling Act, it should be remembered that the above quoted language forms an integral part of a law and therefore such effect must be given to the grant and reservation as will carry out the intent of Congress. This rule is applicable regardless of whether or not at the time said grant, reservation and law took effect there existed any present power of identification of all of the land covered by the grant and the reservation.

United States v. *Southern Pac. R. Co.*, 146 U. S. 570:

"In view of this late and clear declaration, it would be a waste of time to attempt a re-examination of the questions, or a restatement of the reasons which have established these as the settled rules of law in respect to land grants, and made it so that the old common-law rule as to the necessity of identification to a conveyance has not been controlling in determining the scope and effect of a congressional land grant. * * *"

"* * * Illy as it may accord with the common-law notions of identification of tracts as essential to a valid transfer of title, it is fully settled that we are to construe these acts of congress as laws as well as grants; * * *"

" 'It is always to be borne in mind, in construing a congressional grant, that the act by which it is made is a law as well as a conveyance, and that such effect must be given to it as will carry out the intent of congress. That intent should not be defeated by applying to the grant the rules of the common law, which are properly applicable only to transfers between private parties. To the validity of such transfers it may be admitted

that there must exist a present power of identification of the land, and that, where no such power exists, instruments with words of present grant are operative, if at all, only as contracts to convey. But the rules of the common law must yield in this, as in all other cases, to the legislative will.' "

Admittedly, Wyoming, under its Enabling Act, acquired legal title to all surveyed sections 16 and 36 not theretofore disposed of. The pivotal question in this case concerns the right or power of the United States after the Enabling Act took effect to make a withdrawal or other disposition of the unsurveyed Sections 16 and 36 which would operate to defeat the clear and specific reservation of said unsurveyed Sections to Wyoming for school purposes.

It will be noted that Congress, in order to make it clear beyond doubt that Wyoming would ultimately acquire legal title to all Sections 16 and 36 which were unsurveyed at the time its Enabling Act took effect, not only provided that said unsurveyed sections should not be subject to preemption, homestead entry or any other entry under the land laws of the United States, but also emphasized the effect of this limitation upon the power of disposition by the United States prior to survey by expressly declaring that "such lands shall be reserved for school purposes only."

In the absence of this specific and emphasized reservation, it might be plausibly contended that the language of the Enabling Act stating that said lands "shall not be subject to preemption, homestead entry or any other entry under the land laws of the United States" merely created an obligation on the part of the United States not to transfer or dispose of the lands to a third party, and that such language standing alone would not prohibit the United States from using the lands for its own purpose by way

of forest, water power, petroleum and other types of withdrawals and reservations. It was for the very purpose of guarding against such a contention that Congress, with prophetic vision, added the words "but shall be reserved for school purposes only."

3. *Under the decisions of this Court, Sections 4 and 5 of Wyoming's Enabling Act, constituted a congressional reservation of all unsurveyed Sections 16 and 36, on behalf of Wyoming, for school purposes and by said reservation the then unsurveyed Section 36 herein involved was set apart and appropriated to Wyoming for said designated use or purpose and therefore said land did not thereafter constitute or form any part of the "public lands" of the United States which were subject to disposition by the officers or agents of the United States under the land laws of the United States.*

Under the decisions of this Court, the language of Section 5 of Wyoming's Enabling Act providing "and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only", constituted a Congressional reservation of all of the unsurveyed Sections 16 and 36 at that time not otherwise disposed of.

These decisions also establish that by said Congressional reservation, the lands covered thereby were set apart from the mass of the public lands of the United States and could not thereafter be considered or treated, by the officers and agents of the United States, as forming any part of the public domain subject to disposition under the land laws of the United States.

A United States Survey of the exterior boundaries of

fractional Township 58, in which the Section 36 in question is situated, was accepted by the Commissioner of the General Land Office on December 20, 1892.

A subdivisional survey of said Township 58 was accepted by the Commissioner on July 27, 1916.

On December 6, 1915, a Petroleum Withdrawal Order was made which purported to include said Section 36, with other lands, in Petroleum Reserve No. 41.

Plaintiff's basic contention seems to be that Section 36 was a part of the public lands of the United States on December 6, 1915, and was therefore subject to withdrawal and reservation for classification or other public purposes under 43 U. S. C. A. Sec. 141, which provides in part:

> "The President may, at any time * * * withdraw from settlement, location, sale or entry any of the public lands of the United States, * * * and reserve the same for water-power sites, irrigation, classification of lands, or other public purposes to be specified in the orders with withdrawals, and such withdrawals or reservations shall remain in force until revoked by him or by an Act of Congress."

It seems obvious that this contention of plaintiff is predicated upon the theory that the Congressional withdrawal of said unsurveyed Section 36, from any type of entry under the land laws of the United States and the specific reservation thereof on behalf of Wyoming for school purposes, was and is meaningless and void.

Upon this premise Plaintiff then contends that Wyoming did not and could not acquire any equitable right, title or interest in said Section 36 until there was an approved subdivisional survey of Township 58, and that until there was such an approved subdivisional survey of Township 58, the United States retained and had a full, complete and unrestricted right and power to dispose of said land as it

might see fit and that there was a valid and lawful disposition by the United States of said land by and through its inclusion in said Presidential Withdrawal Order.

The point under discussion seems to be crucial in its importance because if the decisions of this Court sustain Wyoming in its contention herein, then on this ground alone, Wyoming is, upon the record in this case, entitled to a judgment in its favor.

Congress, under Section 3, Article IV, of the Constitution of the United States, has complete and plenary power over the disposal, withdrawal, reservation and appropriation of lands, surveyed or unsurveyed, belonging to the United States.

Section 3, Article IV, of the Constitution, provides in part:

> "* * * The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; * * *."

United States v. *City & County of San Francisco*, 310 U. S. 16:

> "Article 4, Section 3, Cl. 2 of the Constitution provides that 'The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.' The power over the public land thus entrusted to Congress is without limitations. 'And it is not for the courts to say how that trust shall be administered. That is for Congress to determine.' Thus, Congress may constitutionally limit the disposition of the public domain to a manner consistent with its views of public policy. * * *"

The decisions of this Court are to the effect that the language of Section 5 of Wyoming's Enabling Act withdrawing the unsurveyed Sections 16 and 36 from preemp-

tion and any type of entry under the land laws of the United States and reserving said lands to Wyoming for school purposes only, constituted an appropriation of said lands to the reservation and grant; that thereupon said lands were severed and set apart from the mass of public lands and were not thereafter subject to withdrawal or other type of disposal.

Wilcox v. *Jackson,* 13 Peters 498:

"We now return to the inquiry whether the land in question falls within any of the prohibitions contained in the act of Congress. Amongst others, lands which may have been appropriated for any purpose whatsoever, are exempt from liability to the right of preemption. * * * Now this is appropriation, for that is nothing more or less than setting apart the thing for some particular use. But it is said that this appropriation must be made by authority of law. We think that the appropriation in this case was made by authority of law. * * *

"* * * But we go farther, and say, *that whensoever a tract of land shall have once been legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands; and that no subsequent law, or proclamation, or sale, would be construed to embrace it, or to operate upon it, although no reservation were made of it.*" (Emphasis added.)

Leavenworth, etc. R. R. Co. v. *United States,* 92 U. S. 733:

"And such grants could be treated in no other way, for Congress cannot be supposed to have thereby intended to include lands previously appropriated to another purpose, unless there be an express declaration to that effect. A special exception of them was not necessary, because the policy which dictated the grants confined them to lands which Congress could rightfully bestow, without distributing existing relations and producing vexatious conflicts. *The legislation which reserved them for any purpose excluded*

them from disposal in the manner that the public lands are usually disposed of, and this Act discloses no intention to change the long continued practice with respect to lands set apart for the use of the Government or of the Indians * * *" (Emphasis added).

"We are not without authority that the general words of this grant do not include an Indian reservation. In *Wilcox* v. *Jackson,* 13 Pet. 498, the President, by Proclamation, had ordered the sale of certain lands, without excepting therefrom a military reservation included within their boundaries. The Proclamation was based on an Act of Congress supposed to authorize the sale of these lands, but the court held that the Act did not apply to the case, and then say: *'We go further and say that whenever a tract of land shall have been once legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands, and that no subsequent law, proclamation, or sale would be construed to embrace or operate upon it, although no reservation were made of it.'* It may be said that it was not necessary for the court in deciding the case to pass upon this question; but, however this may be, the principle asserted is sound and reasonable and we adopt it as a rule of construction * * * " (Emphasis added).

"Every tract set apart for some special use is reserved to the Government, to enable it to enforce that use. And there is no difference, in this respect, whether it be appropriated for Indian occupancy or for other purposes. There is an equal obligation resting on the Government to see that neither class of reservations is diverted from the uses to which it was assigned. * * *"

Northern Lumber Co. v. *O'Brien,* 204 U. S. 190:

"* * * The Court, however, adhered to its conclusion that the land covered by the grant could only embrace lands which were, at the time, public lands, free from any lawful claim of other parties, unless

there was an express provision showing that the grant was to have a more extended operation,—citing the decision in *Wilcox* v. *Jackson*, 13 Pet. 498, 10 L. Ed. 264, to which we have referred above, *that land once legally appropriated to any purpose was thereby severed from the public domain, and a subsequent sale would not be construed to embrace it, though not specially reserved* * * *" (Emphasis added).

United States v. *Minnesota*, 270 U. S. 181:

"* * * That rule is that lands which have been appropriated or reserved for a lawful purpose are not public, and are to be regarded as impliedly excepted from subsequent laws, grants, and disposals which do not specially disclose a purpose to include them. *Wilcox* v. *Jackson*, 13 Pet. 498, 513, 10 L. Ed. 264; *Leavenworth, Lawrence & Galveston R. R. Co.* v. *United States*, 92 U. S. 733, 741, 745, 23 L. Ed. 634; *Missouri, Kansas & Texas Ry. Co.* v. *Roberts*, 14 S. Ct. 496, 152 U. S. 114, 119, 38 L. Ed. 377; *Scott* v. *Carew*, 25 S. Ct. 193, 196 U. S. 100, * * *"

Under a long line of decisions by the Federal and State courts construing the Railroad land grant statutes in regard to the rights of the railroad in unsurveyed odd numbered sections within the primary grant, it had been established long prior to 1890, that when Congress in enacting the early Railroad land grant statutes, used the language, "and the odd sections of land hereby granted, shall not be liable to sale, or entry, or preemption before or after they are surveyed", intended to and did sever, set apart and appropriate to the grant, the odd numbered sections within the limits of the primary grant so that thereafter said unsurveyed lands were not subject to any other disposition as "public lands" of the United States.

Northern Pac. R. Co. v. *Lilly*, 6 Mont. 65, 9 P. 116, 118, 119 (1886):

"The grant to this company, however, contains a

limitation upon the right to settle upon or pre-empt any of the lands included within the grant after the general route of the road has been fixed. After that event transpires, said lands are reserved from sale and held for the company, whether before or after the same have been surveyed; and if it should be held that the absolute title of the company did not attach until the definite line of location had been fixed, still, the land having been reserved from sale, except by the company, no person could thereafter acquire any title thereto, or interest therein, save by the act of the company.

"Section 6 provides that the president of the United States shall cause the lands to be surveyed for 40 miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale or entry or pre-emption, before or after they are surveyed, except by said company, as provided in this act, but that the general pre-emption laws shall be and the same are extended to all other lands on the line of the road when surveyed, except the lands granted to the company. This section is itself a grant, and a legislative reservation and withdrawal of the lands granted from sale or pre-emption, except by the company. After the general route of the road has been fixed, it provides that the odd sections "hereby granted" shall be reserved from sale or pre-emption, except by the company. That is to say, whenever the odd sections are designated, by fixing the general route of the road, the grant attaches, and becomes certain and absolute. 'And the odd sections of land hereby granted shall not be liable to sale before or after they are surveyed,' except by the company. This prohibition is absolute. This land is reserved from sale by congress. It is a legislative reservation, and takes effect whenever the general route of the road is fixed; * * *"

St. Paul & P. R. Co. v. *Northern Pac. R. Co.*, 139 U. S. 1:

> "* * * The Northern Pacific act directed that the president should cause the lands to be surveyed 40 miles in width on both sides of the entire line of the road, after the general route should be fixed, and as fast as might be required by the construction of the road; and provided that the odd sections of lands granted should not be liable to sale, entry, or preemption before or after they were surveyed, except by the company. They were, therefore, excepted by that legislation from grants, independently of the withdrawal by the secretary of the interior. His action in formally announcing their withdrawal was only giving publicity to what the law itself declared. * * *"

To the same effect are the following: *Southern Pac. R. Co.* v. *Orton*, 32 F. 457; *Wood* v. *Burlington & Missouri River R. R. Co.*, 14 Otto 329.

In *Sherman* v. *Buick*, 93 U. S. 209 (decided 1876), the Court construed the California school land grant which formed a part of the Act of March 3, 1853, 10 Stat. at L. 246.

By Section 6 of said Act, Sections 16 and 36 in each township, whether surveyed or unsurveyed, were granted to the State of California for school purposes. Section 7 of said act, however, specifically provided that Sections 16 and 36, prior to survey, should be subject to preemption and reservation for public uses.

Section 6 of the Act provided in part:

> "All the public lands in the State of California, whether surveyed or unsurveyed, with the exception of sections sixteen and thirty-six, which shall be, and hereby are, granted to the State for the purposes of public schools in each township; and, with the exception of lands appropriated under this Act, or reserved by competent authority, and excepting, also, the lands

claimed under any foreign grant or title, and the mineral lands, shall be subject to the preemption laws of the 4th of September, 1841, * * *"

Section 7 of the Act provided in part:

"That when any settlement, by the erection of a dwelling-house, or the cultivation of any portion of the land, shall be made upon the 16th and 36th sections before the same shall be surveyed, or when such sections may be reserved for public uses, or taken by private claims, other land shall be selected by the proper authorities of the State in lieu thereof."

This Court, in holding that the provisions of Section 6 granted "away" to California, Sections 16 and 36, whether surveyed or unsurveyed, and conferred on California inchoate rights therein, but that the provisions of Section 7 of the Act, nullified such grant, said in part:

"It is obviously the main purpose of the section to declare that, after the lands are surveyed, they shall be subject to sale, according to the general land system of the government; and, second, to subject them to the right of preemption as defined by the Act of 1841, and to extend that right to lands unsurveyed as well as to those surveyed. But here it seemed to occur to the framer of the Act, that California, like other States in which public lands lay, ought to have the 16th and 36th sections of each township for school purposes, and that they should not be liable to the general Preemption Law, as other public lands of the government would be. He accordingly injected into the sentence the grant of these lands to the State and the exception of them from the operation of the Preemption Law of 1841, together with other lands which in like manner were neither to be sold nor made subject to preemption. These were: lands appropriated under the authority of that Act, or reserved by competent authority; lands claimed under any foreign grant or title *i. e.* Mexican grants), and mineral lands.

All these were by this clause exempted from sale and from the general operation of the Preemption Laws.

"But the experience of the operation of our land system in other States, suggested that it might be ten or twenty and, in some instances, thirty years before all the surveys would be completed and the precise location of each school section known. In the meantime, the State was rapidly filling up by actual settlers on these lands, whose necessities required improvements, and that those improvements, when found to be located on a school section, should have some protection. What this protection should be, and how the rights of the State should be also protected, and the relative rights of the settler and of the State, under these circumstances, is the subject of a distinct section of the Act, the one succeeding that we have just considered.

"That Section 7 provides: 'That when any settlement, by the erection of a dwelling-house, or the cultivation of any portion of the land, shall be made upon the 16th and 36th sections before the same shall be surveyed, or when such sections may be reserved for public uses, or taken by private claims, other land shall be selected by the proper authorities of the State in lieu thereof.' That it was the purpose of this section to provide a rule for the exercise of the right of preemption to the school lands granted by the previous section cannot be doubted. The reason for this is equally clear, namely: that these lands were not only granted away by the preceding section and inchoate rights conferred on the State, but they were, with other classes of lands, by express terms excepted out of the operation of the preemption laws which it was a principal object of that section to extend to the public lands of California generally."

In the Buick Case, the Court was presented with a situation where Congress, by the provisions of Section 6 of California's school land grant statute, had, in express terms, granted to the State of California Sections 16 and

36, whether surveyed or unsurveyed, and had specifically provided that said lands should not be subject to preemption and then, had, by the provisions of the following Section 7 of the Statute, just as specifically declared that prior to survey, said Sections 16 and 36, were subject to preemption and to reservation for public uses. Faced with this situation the Court applied the rule that the provisions of a subsequent section of a statute in conflict with the provisions of a preceding section, are controlling and operate as a nullification of the preceding, conflicting or contradictory provisions of the statute.

In construing Wyoming's school land grant statute, we are presented with the opposite situation. Section 4 of Wyoming's Enabling Act, without any reference to survey, provides that Sections 16 and 36 are granted to the State in support of common schools, unless otherwise disposed of. In the following Section 5 of the Statute, it is provided "and such land shall not be subject to preemption, homstead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

Under the California school land grant statute, by Section 6 thereof, as construed by this Court in the Buick Case, Sections 16 and 36, whether surveyed or unsurveyed, were granted to California, and it was provided that said lands should not be subject to preemption. However, in the following Section 7 of the Statute, conflicting and contradictory provisions were inserted which provided that prior to survey, Sections 16 and 36 should be subject to preemption and reservation for public uses. The Court held that this later specific provision providing that said school lands prior to survey, should be subject to preemption and to reservation for public uses, must be given effect and that this resulted in the nullification of the preceding contradictory provisions of the Statute.

In the California school land grant statute, the subsequent and final declaration of Congress in regard to the withdrawal of the unsurveyed Sections 16 and 36 from preemption and their appropriation to the grant was, that the unsurveyed Sections 16 and 36 prior to survey, were subject to preemption and reservation for public uses, and that said lands were not appropriated to the grant unless at the time they were surveyed they were not occupied by a settler or reserved for a public use. In the Buick Case, this later and final provision of the Statute was held to nullify the preceding and directly contradictory provisions of the Statute.

In Wyoming's school land grant statute, the final provision of the Statute in order of arrangement in regard to the withdrawal of the unsurveyed Sections 16 and 36 from preemption and entry and their reservation and appropriation to the grant, is the clear, direct and emphasized withdrawal of said lands from preemption and entry and the equally clear, direct and emphasized reservation and appropriation of said unsurveyed Sections 16 and 36, to the grant.

It is difficult to conceive how Congress could have designed and used language more apt and carefully tailored for this purpose than "such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

The rather unusual clarity and emphasis of the language used by Congress in Wyoming's Enabling Act in withdrawing the unsurveyed Sections 16 and 36 from preemption and entry and appropriating them to the grant by a reservation of them to Wyoming for its schools, is, we feel, explained by the desire on the part of Congress to carry out the terms and policies of the school land reservation of

Wyoming's Organic Act and to also, beyond any question, take Wyoming's school land grant out from under the decision of this Court in *Heydenfeldt* v. *Daney Gold and Silver Mining Co.*, 93 U. S. 634. (Decided in March, 1877.)

In the Heydenfeldt Case, the Court construed the provisions of the school land grant of the Nevada Enabling Act which provides:

> "That sections numbered sixteen and thirty-six in every township, and where such sections have been sold or otherwise disposed of by any Act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section and as contiguous as may be, shall be and are hereby granted to said State for the support of common schools."

The court held that while this grant was in terms *praesenti* it should be construed as a grant *in futuro* because, at the time of the enactment of the Nevada Enabling Act in 1864, Congress had not authorized any disposition of the public lands within the Territory of Nevada and that, therefore, the words "otherwise disposed of" and the indemnity provision of the statute should be construed as evidencing an intent on the part of Congress that until survey, Sections 16 and 36 should be open to all types of entry under the land laws of the United States. This Court said in part:

> "* * * Congress knew, as did the whole country, that Nevada was possessed of great mineral wealth, and that mineral lands should be disposed of differently from those which were fit only for agriculture. No method for doing this had then been provided; but Congress said to the people of the Territory, 'You shall, if you decide to come into the Union, have for the use of schools a quantity of land equal to two sections in every township and the identical sections themselves, if on survey no one else has any claim to them; but until this decision is made and the lands

> surveyed, we reserve the right either to sell them or dispose of them in any other way that commends itself to our judgment.' *This right of disposition is subject to no limitations and the wisdom of not surrendering it is apparent.* * * *'' (Emphasis added.)

When this language is paraphrased so as to make it applicable to Wyoming's school land grant it reads:

> "Congress said to the people of the Territory of Wyoming, 'You shall, if you decide to come into the Union, have for the use of schools Sections numbered 16 and 36 if no one else at this time has any claim to them and, in order that you may be assured that you will obtain said Sections 16 and 36 of every township, it is understood and agreed that such land shall not be subject to preemption, homestead entry or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.' ''

In the Heydenfeldt Case, the Court construed the school land grant of the Nevada Enabling Act as containing a stipulation to the effect that the United States should retain full and complete legal and equitable title, to Sections 16 and 36, until said sections were surveyed and that prior to such survey the United States had the absolute and unlimited right to dispose of said lands through preemption, homestead or any other character of entry under the land laws of the United States or in any other way it saw fit.

The Wyoming Enabling Act was enacted July 10, 1890, some thirteen years after the decision in the Heydenfeldt Case.

The attempt made by the plaintiff to apply the holding in the Heydenfeldt Case to the Wyoming Enabling Act is nothing short of an attempt to read out of the Enabling Act language that was undoubtedly made a part of it for

the very purpose of displacing the Heydenfeldt holding and preventing the application of that case to the Wyoming Enabling Act. It amounts to a denial of the power of Congress to change its policy in regard to school land grants.

Presumably the Congress when it enacted the Wyoming Enabling Act had full knowledge of the ruling made in the Heydenfeldt Case, as well as the ruling made in *Sherman* v. *Buick, supra.* The Heydenfeldt opinion, handed down thirteen years before the Wyoming Enabling Act was enacted, announced a rule of construction that must have been well known at least to the members of the Congress elected from the Western States, all of which States were vitally interested in any and all questions affecting Sections 16 and 36 that had been granted to them for school purposes. The members of Congress were also presumptively fully acquainted with the construction that had been applied in the Railroad land grant cases. In enacting the Wyoming Enabling Act they used language entirely different from that employed in the Nevada Enabling Act or in the California Act and that conformed fully to the construction that had been previously applied by this Court to Railroad land grants.

This difference in language implies a difference in intention and imperatively requires a difference in construction. It must be assumed that the different language was deliberately chosen for the purpose of bringing about a different construction. *United States* v. *McClure*, 305 U. S. 472, 477, 478; *United States* v. *Perryman*, 100 U. S. 235, 238.

If Congress had intended that the rule announced thirteen years before in the Heydenfeldt Case should be applied to the land grant made to Wyoming in the Enabling Act of July 10, 1890, why did it not employ the same

language that it had previously employed in the Nevada Enabling Act? That language had been already construed by this Court and that construction was well known throughout the Western States and to the members of Congress; certainly to those coming from the Western States. The Congress could have used the Nevada Act as a pattern, already judicially considered and construed. It did not do this. Instead, it used entirely different language. It not only made an immediate grant of the two sections to Wyoming without reference to the matter of survey, but it further provided in Section 5 that, whether surveyed or unsurveyed, the lands should not be subject to preemption or any kind of entry under the laws of the United States and that the same should immediately constitute a reservation for a "public purpose," that is, for "school purposes only." Instead of permitting the grant to be displaced by a subsequent disposition to promote the "public interests," as was true of the statute construed in the Heydenfeldt Case, it selected in that Act the "public interest" that was to be promoted and created an immediate reservation to promote that particular interest.

Are these words, deliberately selected and intentionally made a part of the Act, to be now taken out of the Act by judicial construction? These provisions having been put in in express terms, are they now to be taken out by judicial construction and the Heydenfeldt rule applied even though the intention of Congress to displace that rule in respect to the Wyoming Act is obvious?

4. *The validity of Wyoming's contention has been sanctioned and supported by the Department of the Interior and by the courts in decisions construing and discussing identical provisions of the Enabling Acts of the States of Idaho and Washington.*

Sections 4 and 5 of the Enabling Act of Idaho, and Sections 10 and 11 of the Enabling Act of Washington, are identical to Sections 4 and 5 of the Wyoming Enabling Act in regard to the subject matter involved here.

Washington's Enabling Act took effect February 22, 1889; Idaho's Enabling Act took effect July 3, 1890; and Wyoming's Enabling Act took effect July 10, 1890.

In *F. A. Hyde & Co.*, 48 L. D. 132 (decided in 1902), the Department of the Interior considered and construed the said school land grant provisions of Washington's Enabling Act and ruled that the unsurveyed Sections 16 and 36 in the State of Washington, were not subject to settlement or entry or other disposition on the part of the United States because the title to said lands was in the State of Washington under its school land grant.

It appears from this decision that in 1900, F. A. Hyde & Co. made a selection of a portion of an unsurveyed Section 16 in the State of Washington in lieu of land in California. This selection was held for cancellation for the specifically assigned reason "That the title to the land selected is in the State of Washington, being school lands and is not therefore subject to selection." Presumably, the Department of the Interior, in rendering this decision, had in mind the decision in the Heydenfeldt Case, but at that time the Department of the Interior apparently understood that Congress intended to safe-guard Washington from the effect of the Heydenfeldt decision by the inclusion in Section 11 of its Enabling Act the language "such land

shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

In the case of *Balderston* v. *Brady*, 17 Idaho 567, (decided January, 1910) the Supreme Court of Idaho construed the identical provisions of the school land grant of Idaho's Enabling Act exactly as said provisions had been construed by the Department of the Interior, in the F. A. Hyde & Co. decision. The Court said in part:

> "It will be observed that the language of this grant is '*in praesenti.*' The grant would therefore seem to be a present grant. The act says that sections '16 and 36 in every township of said state * * * are hereby granted to said state for the support of common schools.' It also provides for the selection by the state of 'indemnity lands' to reimburse the state 'where such sections or any parts thereof have been sold or otherwise disposed of by or under the authority of any act of Congress.' This evidently had reference to the time of the passage of the act, and meant that lieu or 'indemnity lands' might be selected for such lands as had been sold or disposed of at the time of the admission of the state. This is accentuated by the provisions of the latter part of section 5, saying that no such lands, 'whether surveyed or unsurveyed,' shall be 'subject to pre-emption, homestead entry, or any other entry under the land laws of the United States.' This act, it will be observed, is different from most of the previous land laws, as well as land grants, in that it specified and included 'unsurveyed' lands and thereby withdrew all the 'unsurveyed' sections 16 and 36 from settlement or 'entry under the land laws.'"

In *United States* v. *Bonner's Ferry Lumber Co.*, 184 F. 187, (D. C. Idaho, Dec. 5, 1910), the Court had occasion, in an action brought by the United States to recover damages

for the cutting of timber upon an unsurveyed Section 36 in Idaho, to consider Sections 4 and 5 of Idaho's Enabling Act. The Court, after holding that it was not necessary to determine whether or not Idaho had, under its Enabling Act, acquired a vested equitable right to ultimately acquire title to the unsurveyed Section 36, said in part:

"Even if it be assumed that the United States has not the legal right to convey the lands to third persons, or, by including them in reservations, permanently to withhold them from the state, it must be held at least that until the lands are surveyed it retains the legal title, and that the title of the state is therefore not complete. At most the state has but an equitable title, and until an official survey is made exact identification of the grant is impossible. It is therefore thought that the demurrer is ruled by the decision of the Supreme Court in *United States* v. *Montana Lumber Manufacturing Company,* 196 U. S. 573, 25 Sup. Ct. 367, 49 L. Ed. 604. That was an action brought by the United States against the defendant lumber company to recover the value of certain timber alleged to have been cut and removed by the defendant from unsurveyed lands, which, when surveyed, would be embraced in a section within the limits of the grant made by Congress to the Northern Pacific Railroad Company. The defense there relied upon was very similar to the defense set up in the present answer. While the lands from which the timber had been removed had never been officially surveyed by the government, they had been located by surveyors employed by the railroad company. The third section of the act granting lands in aid of the Northern Pacific Railroad Company contains the usual granting words: 'That there be, and hereby is, granted to the Northern Pacific Railroad Company, its successors and assigns', etc.—language which, as will be observed, is similar to that of section 4 of the act under consideration, and which, as was remarked by the court, has been frequently held to import a present grant. In the course of the opinion it is said:

" 'The equitable title becomes a legal title only upon the identification of the granted sections. *Deseret Salt*

> *Co.* v. *Tarpey,* 142 U. S. 241, * * * Until the identification of the even and odd numbered sections, the United States retained a special property, at least, in the timber growing in the township; and this was sufficient to enable it to recover the value of the timber cut and removed by the defendants. * * *.'"

Rogers v. *Hawley,* 19 Idaho 751, was decided by the Supreme Court of Idaho on May 10, 1911. This case involved the power of the Land Board of Idaho to exchange the State's right, title or interest in an unsurveyed school section for a like area of surveyed land. The Court did not reverse or depart from the basic principle announced in *Balderston* v. *Brady.* The decision of the Court, holding that the Land Board had authority to make the proposed exchange of an unsurveyed school section for a surveyed section of public land, was predicated upon two Acts of the Idaho Legislature enacted in 1911, which in substance provided that the Land Board should have power to relinquish and exchange both surveyed and unsurveyed school land sections.

Newton v. *State Board of Land Com'rs.,* 37 Idaho 58, was decided by the Supreme Court of Idaho in March, 1923. Here, the question involved was the power of the Idaho Land Board to exchange a surveyed school section for another surveyed section of public land. The Supreme Court of Idaho, in holding that the Land Board had no power to make the proposed exchange, referred with approval to the decision in *Balderston* v. *Brady, supra.* The Court said in part:

> "The Idaho Admission Bill, containing the land grants by the government to the state found in sections 4 and 5 above quoted, together with the acceptance by the Congress of the provisions of the Constitution regulating the manner of locating such lands and the disposition thereof, constitute a compact between the government and the state, which neither may abrogate or modify without the consent of the other party to the

pact. It is hardly conceivable that the government would attempt to abrogate or modify the terms of this agreement without the consent of the state, and unless such provisions conflicted with the federal Constitution, the state could not do so without the consent of the United States.

"It has been held that where Congress admits a state into the Union under a Constitution which the people have formed, the provisions of such Constitution are invested with all the authority conferred by any act of Congress. *McCornick* v. *Telegraph Co.*, 79 Fed. 449, 25 C. C. A. 35, L. R. A. 684; *Farm Investment Co.* v. *Carpenter*, 9 Wyo. 110, 61 Pac. 258, 50 L. R. A. 747, 87 Am. St. Rep. 918; *Short* v. *Praisewater*, 35 Idaho 691, 208 Pac. 844.

"Controversies which have arisen over the character and extent of the title which a state takes to sections 16 and 36 when unsurveyed, under grants similar to that in the Idaho Admission Bill, have given rise to many decisions by the courts, departmental decisions, and polemic discussions by eminent members of the bar, that would fill volumes, and are too numerous to be even briefly reviewed. They are not of controlling importance, since the question here presented relates only to surveyed school sections 16 and 36.

"In *Balderston* v. *Brady*, 17 Idaho 567, 107 Pac. 493, in an exhaustive and able opinion by Ailshie, J., this court held that the grant contained in section 4 of the Admission Bill by its terms was clearly a grant in praesenti, and included unsurveyed as well as surveyed lands; that the indemnity clause found in section 5, providing that, where such sections or any part thereof had been sold or otherwise disposed of by or under the authority of any act of Congress, indemnity lands might be selected, had reference to lands sold or disposed of at the time of the passage of the Admission Bill, which was July 3, 1890, because this act provided that such lands should not thereafter be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but should be reserved for school purposes only."

The Supreme Court of Washington first considered and construed the provisions of Sections 10 and 11 of Washington's Enabling Act, which are similar to Sections 4 and 5 of Wyoming's Enabling Act, in the case of *State* v. *Whitney*, 66 Wash. 473, 120 P. 116 (Jan. 1912). The Court said in part:

> "* * * The Heydenfeldt Case was decided in 1877. Our enabling act was approved February 22, 1889, and was the first federal grant of lands to new states subsequent to the decision in that case. Could we not assume that at the time it chose the language of our enabling act, Congress had in mind the decision in the Heydenfeldt Case? and because thereof incorporated into section 11: 'Such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States whether surveyed or unsurveyed, but shall be reserved for school purposes only.' Whether the decision in the Heydenfeldt Case had any influence over Congress or not in choosing its language in section 11, what other construction can be given to these words than that Congress meant to emphasize its intention to make a present grant, and to put it beyond any future controversy or necessity of construction by courts or land departments, that the United States did forever thereby relinquish all its title, and such lands should thereafter be subject to no form of entry under federal sanction, whether surveyed or unsurveyed? We therefore hold that the words of grant in our enabling act are words of present grant, and that when, by the adoption of its constitution, the state affirmed the provisions of the enabling act and such constitution was approved by the United States, and the state of Washington thereupon fully admitted into the Union, the grant defined in the enabling act took effect as of its date, and passed the entire title of the United States as fully and completely as though such sections 16 and 36 had been previously surveyed, and were then capable of exact identification."

In 1913 a statute was enacted in Washington authorizing the Commissioner of Public Lands to exchange unsurveyed Sections 16 and 36, within reservations created by the United States, for other lands of the United States. This right of exchange as far as the United States was concerned, was given by the provisions of the Act of February 28, 1891. (43 U. S. C. A. Sec. 681.)

The case of *Thompson* v. *Savage,* 110 Wash. 486, decided in March 1920, involved a situation where the Commissioner of Public Lands was about to make such exchange and the Attorney General sought to enjoin or prohibit such exchange upon the theory that the full and complete title to the unsurveyed school sections passed to Washington under its Enabling Act and that therefore the legislature was without power to authorize any disposition of said lands except in strict keeping with the Washington Constitution.

In the Whitney Case, the Supreme Court of Washington, in construing the language of Section 11 of Washington's Enabling Act, had held that this language, when considered in the light of the Heydenfeldt decision, established an intent upon the part of Congress that Washington, under its Enabling Act, acquired full legal title to the unsurveyed Sections 16 and 36 just as it acquired legal title to the surveyed Sections 16 and 36. In the Savage Case, the Court reconsidered this question and held that as the Court then understood the Heydenfeldt Case, it established a federal rule to the effect that Washington did not, upon the effective date of its Enabling Act, acquire full and complete legal title to unsurveyed Sections 16 and 36. The decision goes no further than this. The Court said in part:

> "Our problem, then, is manifestly reduced to this: Was our school land grant a grant in praesenti, in the sense that title to all sections 16 and 36 within the state, those which were necessary to be eventually identified by a government survey as well as those which

were then so identified, vested immediately in the state upon its admission to the Union. * * *"

"In the light of the decision of the federal Supreme Court in the Heydenfeldt Case, as interpreted in the Morrison Case above quoted from, we cannot escape the conclusion that the decision of this court in *State* v. *Whitney*, holding that our school land grant was one in praesenti of unsurveyed as well as surveyed sections, completely vesting title in all of said sections at the time of the grant, must now be regarded as erroneous, and no longer controlling upon that federal question."

The decision was carefully limited to a consideration of whether or not Washington had acquired a full and complete title to the unsurveyed designated school sections under its Enabling Act.

No question as to the vesting in Washington of an equitable right to ultimately acquire full legal title to the unsurveyed designated school sections upon an accepted subdivisional survey of the townships in which they were situated was presented or considered by the Supreme Court of Washington in the Savage Case.

It is particularly important to note that no question as to the vesting in Washington of an equitable right ultimately to acquire the unsurveyed designated school sections by reason of the language of Section 11 of its Enabling Act, plus their susceptibility of identification by reason of an accepted United States Survey of the boundaries of the townships in which they were situated, was presented or considered by the Supreme Court of Washington in the Savage Case.

5. *United States* v. *Morrison*, 240 U. S. 192, *analyzed and contrasted with and distinguished from the instant case.*

An analysis of the Morrison Case seems clearly to disclose that it does not bar the acceptance in this case of the construction of its school land grant and reservation contended for by Wyoming, and which, it appears from the Master's Report, he would have adopted as sound and equitable but for his understanding that this decision stood as an impassable barrier thereto.

On page 21 of his report (R. 446), the Master states:

> *"Were this question not foreclosed by a decision of this Court in United States* v. *Morrison, 240 U. S. 192, the arguments of the defendants would be unanswerable.* * * *"* (Italics supplied.)

A note on page 23 of his report (R. 448) reads as follows:

> "[1] In applying the rule of strict construction to school land grants it has always seemed to me that the court did not give consideration to the true relationship created between the Federal Government and the States by these enactments. In each case the grant created a charitable trust, with the Government the trustor, the State the trustee, and the future schools and school children the beneficiaries. The rule of construction, therefore, should have been a liberal one favoring the trustee and the beneficiaries and where the meaning was debatable that construction which increased rather than diminished the corpus should have been adopted."

The Master's view that the decision in the Morrison Case was determinative of the construction of the school land grant provisions of Wyoming's Enabling Act and that he was therefore not free to apply what seemed to him "unanswerable" reasoning and equitable principles,

seems to be primarily predicated upon the weight which he gave to the interpretation and effect given by the Supreme Court of Washington in the Savage Case to the opinion in the Morrison Case.

The Morrison Case was an action by the United States to quiet title to a Section 16 in Oregon. It appears therefrom that prior to May 27, 1902, "no survey of any kind" had been made by the United States of the lands involved. On June 2, 1903, a field survey was approved by the United States Surveyor General of Oregon and on June 8, 1903, the plats and field notes of this survey were transmitted to the Commissioner of the General Land Office. Objections were made to the survey and additional surveys were made and additional field notes submitted. On January 31, 1906, the Commissioner accepted the survey. On December 10, 1906, Oregon issued a certificate of sale covering a portion of said Section 16 and thereafter, on July 12, 1910, a deed, predicated upon said certificate, was issued.

The school land reservation provision of Oregon's Organic Act (August 14, 1848) provided:

> "That when the lands in the said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same is hereby, reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same."

The school land grant provisions of Oregon's Enabling Act (February 14, 1859) provides:

> "That sections numbered sixteen and thirty-six in every township of public lands in said state, and where either of said sections, or any part thereof, has been

sold or otherwise been disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said state for the use of schools."

The above quoted language of Oregon's Organic Act had been used in all of the preceding Organic Acts which contained a school land reservation provision. This language was used in recognition of and to implement the then prevailing policy of keeping the designated school land open to preemption and entry so as to promote the early and rapid settlement and development of the lands of the Western Territories and States.

All the Enabling Acts which had preceded Oregon's were substantially similar to Oregon's in that they imposed no limitation or restriction upon the power of the United States to dispose of designated unsurveyed school lands from the effective date of the Enabling Act and down to the time that there was an accepted United States survey which fixed the status of said lands and made them susceptible of identification.

All these Organic Acts and all these Enabling Acts, as to the designated school lands, proceeded upon the same basic policy, *i. e.*, that these lands were to remain subject to preemption or entry or other disposition by the United States until their status had been fixed by an accepted United States survey which made them capable of identification.

Plaintiff's contention that the Morrison Case is controlling seems to be primarily predicated upon that portion of the opinion which reads:

"* * * It is also urged that the court (the court here referring to its opinion in the Heydenfeldt Case involving the Nevada Enabling Act) emphasized the fact that there had been no sale or disposition of the public lands in Nevada prior to the enabling act, and therefore that the clause could refer only to future

disposition; whereas, in the case of Oregon, there had been earlier provisions for the disposal of the public domain. But Congress used the same phrase substantially in nearly every one of the school grants, and it was the manifest intention to place the states on the same footing in this matter. The same clause, relating to the same subject, and enacted in pursuance of the same policy, did not have one meaning in one grant and a different meaning in another; it covered other dispositions, whether prior or subsequent, if made before the land had been appropriately identified by survey and title had passed. * * *"

The controlling significance which Plaintiff attaches to this portion of the opinion in the Morrison Case, seems obviously unwarranted. Certainly it cannot be reasonably urged that Congress did not have power to change its policy in regard to whether or not the unsurveyed designated school lands should be subject to preemption or other disposition by the United States prior to an accepted United States survey which fixed their status and made them susceptible of identification. No one can question the logic and reasoning of the Court in pointing out that Congress intended that the states admitted under the policy of keeping the designated school lands subject to preemption and entry and other disposition on the part of the United States until after survey should stand "on the same footing."

We, however, submit that by this language the Court did not intend to hold that Congress might not change its policy in the light of changing circumstances and the established results of the former policy, and that when it did so, such change in policy written into later Enabling Acts would not be given effect by the Courts. *United States* v. *City of San Francisco*, 310 U. S. 16.

The wisdom of the policy of making the designated

unsurveyed school land subject to preemption, entry and other disposition by the United States prior to survey, has, from an early date, been questioned and debated. During almost all of the time during which territories were being created this policy, although under attack from time to time, prevailed. It was not until near the end of this period when the Wyoming Territory was organized on July 25, 1868, that the critics of this policy were finally able to satisfy Congress that a policy which would augment the corpus of the trust for schools was more important than the policy of promoting the early and rapid settlement and development of the lands of the Western Territories and States. By this time, however, experience had satisfied a majority of Congress that the policy of making the designated school lands subject to preemption and entry until after survey was resulting in the loss to the public schools of all of the valuable and productive designated school lands and this policy was repudiated by Congress and the contrary policy of withholding the designated unsurveyed school lands from preemption, entry and other disposal by the United States and making a specific reservation of them for the public schools was adopted. This is conclusively established by the legislative history of Wyoming's Organic Act.

Section 14 of this Act, as introduced, proposed that Congress continue the policy of making the designated school lands subject to preemption and entry prior to survey through and by means of the customary provision that: "When the lands in said Territory shall be surveyed under the direction of the United States preparatory to bringing the same into market." An amendment striking all reference to survey was adopted for the avowed and declared purpose of reserving the unsurveyed Sections 16 and 36 of the Territory of Wyoming from the date of the Act to the end that the more productive and valuable

Sections 16 and 36 should not be lost to the State through preemption and entry by reason of the established long delay incident to the completion of the surveys of the Western lands.

This policy of withholding the designated unsurveyed school lands from preemption was proposed as early as 1853 and in the first instance was incorporated as a part of the school land grant to California by Section 6 of the Act of March 3, 1853 (10 Stat. at L. 246). At that time, however, Congress was not entirely satisfied as to the merit of this policy under the then existing conditions and the provisions of Section 6 of the statute were nullified by the provisions of the succeeding Section 7 which specifically reinstated the old policy by providing that the designated school lands prior to survey should be open to preemption.

In the Heydenfeldt Case, this Court ruled that the school land grant of an Enabling Act, which followed an Organic Act which had authorized the preemption, entry and other disposal by the United States of designated school lands prior to survey which used the words "and where such sections have been sold or otherwise disposed of" immediately following the designation of Sections 16 and 36 and immediately preceding the words of *praesenti* grant, and which imposed no limitation upon the power of the United States to dispose of the designated school lands prior to an accepted United States survey thereof, continued in force and effect the policy of the Organic Act which looked to said grant of making the designated unsurveyed school lands subject to entry and other disposition by the United States until there was an accepted United States survey which fixed the status of said lands and made them capable of identification.

The Heydenfeldt Case was decided in 1877 and the first

Enabling Act thereafter was the Enabling Act of February 22, 1889, under which Washington, Montana and North and South Dakota came into the Union.

The decision in the Heydenfeldt Case had established that if Congress in 1889 still felt that the policy of making the designated unsurveyed school lands subject to preemption and entry and other disposition by the United States after the effective date of an Enabling Act and down to the time of an accepted survey which fixed the status of said lands and made them capable of identification should be continued, then all Congress had to do was to follow the wording of the Nevada Enabling Act which, under the decision in the Heydenfeldt Case, had become an adjudicated pattern for continuing this policy in effect. Congress, however, determined that this policy should not be continued in regard to the designated unsurveyed school lands in Washington, Montana and North and South Dakota. In order to reject this policy and adopt the opposite one, Congress inserted into this first Enabling Act following the Heydenfeldt Case, by clear, specific and emphatic terms, the limitations upon the power of the United States to dispose of said lands by preemption, entry or otherwise after the effective date of the Enabling Act, the absence of which from the Nevada Enabling Act had been a controlling factor in causing the Court in the Heydenfeldt Case to rule that this policy was continued in force and effect by the Nevada Enabling Act. The language used by Congress for this purpose was: "such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

This same policy was followed by Congress when Idaho was admitted on July 3, 1890, by the use of the same language.

This language is, of course, the identical language used in Wyoming's Enabling Act of July 10, 1890, for the same end and purpose.

It is important to note, however, that in the case of Wyoming it was not necessary for Congress to adopt a policy different from the policy put into effect in Wyoming territory by the school land reservation provision of Wyoming's Organic Act.

Wyoming is the only state where the policy of withholding the designated unsurveyed school lands from preemption and entry and reserving them for the schools was adopted by Congress in the Organic Act which preceded and looked to the State's Enabling Act.

The meaning, intent and purpose of the provision, "such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only," considered in the light of the former policy of making designated, unsurveyed school lands subject to preemption, entry and other disposition by the United States prior to survey, seems clear and certain from a consideration of the language itself. If, however, there is any doubt as to the policy which Congress intended to adopt in regard to Wyoming's designated unsurveyed school lands by the use of this language in Wyoming's Enabling Act, then this doubt is removed by the legislative history of this language as it was used in the said Enabling Act of February 22, 1889, under which Washington was admitted to the Union. This language first appeared as a part of Section 6 of said Enabling Act immediately following the "grant provisions." During the legislative history of this provision it was proposed to add thereto a provision which was to the effect that settlers upon the designated unsurveyed school lands at

the time of the effective date of the Enabling Act, or within a specified time thereafter, should have a preference right to buy a certain quantity of the school land upon which they had settled from the State at $6.00 per acre. Objection to this suggestion was made on the ground that if a provision of this character was added it would mean that all of the valuable and productive designated school land sections then unsurveyed would be acquired by settlers at a price which would cause serious loss to the corpus of the school land trust fund. It will be noted that the argument which was used to defeat such proposal was substantially the same argument which brought about the elimination from Wyoming's Organic Act of any reference to surveys and resulted in the reservation of the designated unsurveyed school lands from the effective date of Wyoming's Organic Act.[1]

It seems clear that under the policy adopted by Congress in dealing with the designated "place" school land grant to Wyoming, the words "otherwise disposed of" used in Section 4 of Wyoming's Enabling Act must be construed as referring to such of said lands as had been theretofore disposed of because any future disposition of said lands is prohibited by the express terms of Section 5 of the Act and the reservation of said lands to Wyoming for school purposes only. To construe the words "not otherwise disposed of" as looking to the future would be to nullify the prohibition against the preemption or entry of said lands and the congressional reservation of them on behalf of Wyoming for school purposes only.

It likewise seems clear that in construing the words "and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United

[1] Data as to the legislative history of this language as used in Wyoming's Enabling Act with excerpts from Committee Reports will be found in Appendix III, at Pages 102 to 108.

States, whether surveyed or unsurveyed, but shall be reserved for school purposes only," it must be remembered that under the rule of law as established by this Court prior to the date of Wyoming's Enabling Act, this phrase only has significance when it is applied to unsurveyed school land sections. Under this rule legal title to the designated school land sections, which at the time of Wyoming's Enabling Act were situated within townships which had been surveyed by an accepted subdivisional survey, vested in Wyoming simultaneously with the enaction of Wyoming's Enabling Act. As to these surveyed designated school land sections, no provision was necessary in the statute withdrawing them from preemption and entry and no reservation of them for the purposes of the grant was necessary because legal title to these lands passed to Wyoming by operation of law forthwith upon the enaction of Wyoming's Enabling Act. Technically, therefore, the last seven lines of Section 5 were only applicable to the unsurveyed designated school land sections. It was these lands that, after Wyoming's Enabling Act took effect, the United States still held legal title to, and these were the only designated place school land sections that the United States had jurisdiction over after Wyoming's Enabling Act took effect.

The first eight lines of Section 5 of Wyoming's Enabling Act which end with a semi-colon are concerned with the agreement, stipulation, and obligation of the state in regard to the disposal of the school lands and the holding of the proceeds of disposal in trust, with the income to be used for the support of the schools. This portion of Section 5 is clearly intended to constitute an undertaking and agreement on the part of Wyoming as to the manner in which it will use the school lands granted to it by the United States. Following said semi-colon in line 9 of said Section 5, the subject-matter of the balance of this section is clearly

the stipulation and agreement on the part of the United States in regard to unsurveyed designated school land sections. Congress knew that by operation of law legal title to the designated school land sections, which had been surveyed at the time Wyoming's Enabling Act took effect, passed to Wyoming simultaneously with the enaction of its Enabling Act. Congress also knew that the school land reservation of Wyoming's Organic Act looked to a grant to the State of Wyoming of the unsurveyed school land sections, and, therefore, Congress, in order to carry into effect the policy, spirit, and meaning of the school land reservation provision of the Wyoming Organic Act, inserted as the concluding provision of Section 5 an agreement and stipulation on the part of the United States that the unsurveyed designated school land sections should not be subject to preemption or entry or any other disposition, but should be reserved on behalf of Wyoming for school purposes only.

Congress also knew that in the Heydenfeldt Case this court had ruled that, the absence of any provision in the Nevada Enabling Act limiting the power of disposal by the United States prior to survey, was indicative of an intent on the part of Congress to retain the power of disposal of the designated school land sections by preemption, entry, or otherwise, until there had been an accepted survey thereof. Congress, therefore, in order to take Wyoming out from under the Heydenfeldt Case, included as a part of Section 5 this stipulation on the part of the United States that said unsurveyed designated school land sections would not be disposed of by the United States through preemption or any type of entry, and then by way of a "clincher", followed with the provision that said unsurveyed designated school land sections "should be reserved for school purposes only."

By reason of the foregoing, it is perfectly clear that the Morrison Case should not control in the case at bar in the manner suggested by Plaintiff. Such case will not be overruled nor modified by the application of the construction and principles contended for herein by Wyoming which are supported by and in accordance with an established line of decisions of this Court.

6. *Discussion of Plaintiff's contentions based on Sections 4 and 5 of Wyoming's Enabling Act, Section 6 of the Act of August 9, 1888, and the Act of February 28, 1891.*

When the case was before The Master, the Plaintiff contended, in effect, that the reference in Section 4 of the Enabling Act to Section 6 of the Act of August 9, 1888, had the effect of "assimilating" Section 6 as a part of Section 4, with the result that the prohibitory and reservation provisions of Section 5 of the Enabling Act were nullified. A careful consideration of the applicable statutory provisions will demonstrate that there is no merit in this argument.

Sections 4 and 5 of the Wyoming Enabling Act provide:

> "Sec. 4. That sections numbered 16 and 36 in every township of said proposed state, and, where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said state for the support of common schools, such indemnity lands to be selected within said state in such manner as the legislature may provide, with the approval of the secretary of the interior; provided, that Section 6 of the Act of Congress of August 9, 1888, entitled 'An Act to authorize the leasing of the school and university lands in the Territory of Wyoming, and for

other purposes', shall apply to the school and university indemnity lands of the said state of Wyoming so far as applicable.

"Sec. 5. That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

Section 6 of the Act of August 9, 1888, (Chap. 819, 25 Stat. 393), referred to in the proviso of Section 4 of the Enabling Act, reads as follows:

"Sec. 6. That where lands in the sixteenth and thirty-sixth sections, in the Territory of Wyoming, are found upon survey to be in the occupancy, and covered by the improvements of an actual preemption or homestead settler, or where either of them are fractional in quantity, in whole or in part, or wanting because the townships are fractional or have been or shall hereafter be reserved for public purposes, or found to be mineral in character, other lands may be selected by an agent appointed by the governor of the Territory in lieu thereof, from the surveyed public lands within the territory not otherwise legally claimed or appropriated at the time of selection, in accordance with the principles of adjustment prescribed by section twenty-two hundred and seventy-six of the Revised Statutes of the United States, and upon a determination by the Interior Department that a portion of the smallest legal subdivision in a section numbered sixteen, or thirty-six, in Wyoming, is mineral land, such smallest legal subdivision shall be excepted from the reservation

for schools, and indemnity allowed for it in its entirety, and such subdivisions, or the portions of them remaining after segregation of the mineral lands or claims, shall be treated as other public lands of the United States."

It will be noted that the subject matter of the first ten lines of Section 4 of the Enabling Act ending with the word "schools" is the grant to the State of Sections 16 and 36 and lieu lands in the event said sections or any parts thereof have been sold or otherwise disposed of.

After the word "schools" in the tenth line of said Section 4, a comma appears and then it is provided "such indemnity lands to be selected within said state in such manner as the legislature may provide with the approval of the Secretary of the Interior;".

It is obvious that the subject matter of Section 4 down to the word "schools" in the tenth line is the primary grant of Sections 16 and 36 and indemnity lands in lieu thereof where said sections or any part thereof have been sold or disposed of. It is likewise obvious that the subject matter of the words of the statute following the comma appearing after said word "schools", is the method or manner of selecting the indemnity lands. In this regard the statute expressly provides "such indemnity lands to be selected within said state in such manner as the legislature may provide, with the approval of the Secretary of the Interior." It will be noted that down to this point in Section 4, Sections 16 and 36 of every township in the state have been granted together with indemnity lands in lieu of said Sections 16 and 36 if said sections or any part thereof have been sold or disposed of.

Down to this point, no express provision appears which gives to Wyoming the right to select lieu lands if upon survey it is found that a township is fractional and does

not contain a Section 16 or 36 or if it is found that a Section 16 or 36 is fractional so that it does not contain 640 acres.

It seems clear that the subject matter of the statute immediately preceding the "Provided" clause is the right to lieu lands. Under the authorities, this, in itself, would be sufficient to confine the proviso clause to the subject matter of the statute immediately preceding such proviso. Congress, however, was not content to leave the construction of the proviso clause to this rule of law and expressly stated that Section 6 of the Act of August 9, 1888, should only apply to the lieu lands so far as it was applicable and not in conflict with any of the express and specific provisions of the body of the statute.

Congress, by incorporating as a part of Section 4 that portion of Section 6 of the Act of August 9, 1888, which provided for the selection of lieu land, where a township was fractional and did not include a Section 16 or 36, or where said sections were fractional, covered a situation that was not provided for in the body of the section. Congress also by this reference provided that lieu land selections made by reason of said fractional townships or sections should be made in keeping with the method or procedure established by Section 2276 R. S. (43 U. S. C. A. Sec. 852).

This much of Section 6 of the Act of August 9, 1888, is applicable and not in conflict with the subsequent express and specific provision of Section 5 which provides "and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

The contention of the United States is that by the reference in Section 4 to Section 6 of the Act of August 9, 1888, Section 4 must be construed as containing an express and

specific provision to the effect that the unsurveyed Sections 16 and 36 should be subject to preemption and homestead entry and any other type of disposition on the part of the United States.

We submit that this is a strained and untenable construction of the proviso of Section 4. The effect of that proviso was simply to adopt that part of Section 6 of the Act of August 9, 1888, that applied to the indemnity lands "of the said State of Wyoming so far as applicable." The effect was to provide how the indemnity lands should be selected in cases where the State was entitled to select indemnity lands. The proviso subtracted nothing from the grant and certainly subtracted nothing from Section 5 prohibiting preemption, homestead entries or other entries and creating immediately a reservation "for school purposes only."

As we have before pointed out, the indemnity or "lieu" provisions of Section 4 of the Wyoming Enabling Act, considered in connection with the provisions of Section 5, could apply and did apply only to the lands already disposed of, under the authority of Congress. These indemnity or "lieu" provisions had no application to *future* dispositions of these lands because Section 5, considered in connection with Section 4, effected an immediate prohibition of future disposition of these lands by preemption or any kind of entry under the land laws of the United States, and further provided that these lands should be reserved "for school purposes only." With future disposition prohibited, how could the in "lieu" or indemnity provisions of Section 6 be operative in respect to such disposition?

To construe this proviso and Section 6 to which it refers as meaning that the lands reserved for "school purposes only" and on which preemption and entry claims were prohibited should nevertheless be subject to such claims is to

nullify, not only the provisions prohibiting such preemption and entries, but also the provision creating Congressional reservation "for school purposes only," for the benefit of the people of the State of Wyoming. For that reason the suggested construction is obviously untenable.

It is also evident that if the theory of Plaintiff is adopted, then there exists in Section 4 of the statute an express and specific provision in direct and irreconcilable conflict with the above quoted portion of Section 5.

The provision of Section 5 to the effect that the unsurveyed Sections 16 and 36 shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, but shall be reserved for school purposes only, forms a part of the body of the Act and is the latest in order of position and arrangement and is therefore controlling as to any provision of Section 6 of the Act of August 9, 1888, which is in conflict thereto.

State v. *Welker*, 47 Ohio App. 42, 190 N. E. 150:

> "It is an elementary rule of statutory construction that statutes are to be construed so as to give them effect if possible, and that repeals by implication are never favored. Where there is a conflict between the express provisions of a statute incorporated in that statute by reference, the express provisions of the statute are to be given effect over conflicting provisions of the statute incorporated by reference, and the provisions of such incorporated statute are to be restricted to matters regarding which there is no conflict."

Reuter v. *Board of Sup'rs.*, 220 Cal. 314, 30 P. (2d) 417:

> "* * * In California Jurisprudence, vol. 23, p. 744, it is said: 'A proviso—the office of which is to explain, qualify or restrain the operation of a preceding provision—should be read in the light of the subject matter of the act, as well as in connection with the clause which it follows. As a general rule, a proviso

which is clearly repugnant to the body of the act will be ignored, though, in accordance with the settled rule, it is the duty of the court to reconcile a proviso, when reconciliation is practicable, with an apparently conflicting provision so as to carry into effect the intention of the lawmakers as it appears from the whole act and from contemporaneous legislation.' 'It would seem that the language there used could be construed as operative without nullifying these express provisions; but if this be not so, and the two provisions are contradictory, it is the proviso and not the principal part of the statute which must give way.' * * *"

United States v. *Daniels*, 279 F. 844, 849 (2nd Cir.):

"We do not think that this apparent conflict is one in reality. It is a cardinal rule of construction that effect is to be given, if possible, to every word, clause, and sentence of the statute. * * * It is the duty of the court so far as practicable to reconcile the different provisions, so as to make them consistent and harmonious, and to give a sensible and intelligent effect to each. * * * In the consideration of irreconcilable conflicting provisions, if both were enacted the same time, the last in order or arrangement controls. *Hall* v. *Equator M. & S. Co.*, Fed. Cas. No. 5,931; *In re Richards*, 96 Fed. 935, 939, 37 C. C. A. 634; *In re Tune* (D. C.) 115 Fed. 906, 911; *United States* v. *Jackson*, 143 Fed. 783, 75 C. C. A. 41; *Howard* v. *Bangor & A. R. Co.*, 86 Me. 387, 29 Atl. 1101; *State* v. *Public Service Commission*, 101 Wash. 601, 172 Pac. 890. And one of Puffendorf's rules of construction is that:

" 'When we meet with a seeming repugnancy in the terms, conjectures are necessary to work out the genuine sense, by reconciling it, if possible, to those terms that seem to be repugnant. But if there be a clear, evident repugnancy, the latter vacates the former.' "

Plaintiff's Brief on this point seems to indicate a loss of faith in the theory that the provisions of the proviso of Section 4, nullify the crucial language of Section 5 and seems to disclose an increased attachment on the part of

Plaintiff to the contention that even though the proviso of Section 4 could not nullify the subsequent provisions of Section 5, nevertheless, the provisions of Section 5 withdrawing the unsurveyed designated school land sections from preemption and entry, were within seven months after their enaction repealed by the Act of February 29, 1891, and said unsurveyed school lands were thereupon thrown open to preemption and entry.

Putting aside for the time being, the legal implications inherent in the fact that Wyoming's Enabling Act was not ordinary "run of the mill" legislation, but on the other hand constituted a compact between sovereign states, we suggest that the weakness of this "second string" to Plaintiff's bow, is apparent.

Plaintiff, in the conception of this theory carefully ignored the vitally significant fact that Section 5 not only contains a provision withdrawing the unsurveyed designated school sections from preemption and entry but also contains a provision which in plain, direct and positive terms, appropriated said unsurveyed school land to Wyoming's school land grant by a reservation of them limited to the use and purpose of the grant, *i.e.*, for school purposes only.

Beginning with *Wilcox* v. *Jackson*, 13 Peters 498, this Court, in the long line of cases heretofore discussed in a preceding division of this brief, has clearly and emphatically held, "whensoever a tract of land shall have once been legally appropriated to any purpose, from that moment the land thus appropriated becomes separated from the mass of public lands and that no subsequent law would be construed to embrace it. Every tract set apart for some special use is reserved to the Government to enable it to enforce that use, and there is no difference in this respect whether it be appropriated for Indian occupancy or for other purposes. There is an equal obligation resting

on the Government to see that neither class of reservations is diverted from the uses to which it was assigned."

Plaintiff seeks to gloss over and avoid the difficulties presented by the fact that the provisions of Section 5 of Wyoming's Enabling Act constitute a stipulation of the compact between the United States and Wyoming under which Wyoming entered into the Union by off-handedly treating Wyoming's Enabling Act as ordinary public land legislation subject to the changing views and even the whim or caprice of each succeeding Congress.

It is easy to understand why no authority for this novel and astounding proposition is cited or urged. Since as early as *Cooper* v. *Roberts*, 18 How. 173, and *Beecher* v. *Wetherby*, 95 U. S. 517, this Court has held that the terms, provisions and stipulations of an Enabling Act under which a State comes into the Union, form a part of a solemn compact between the United States and the State, and that therefore, the terms, stipulations, conditions and provisions of an Enabling Act may not be altered or changed except upon the formal consent of both of the sovereign parties to the compact evidenced and given in the manner required by law.

II.

On December 20, 1892, Upon the Acceptance by the Commissioner of the General Land Office of the Coleman Survey of Township 58, the Exterior Boundaries and Corners of Said Township Were Fixed and Established and the Exterior Boundaries, Corners and Quarter Corners Were Marked So That Wyoming, Under the Provisions of Its Enabling Act, Became Vested in Equity With an Indefeasible Right, Title and Interest in School Section 36 Which Could Not Thereafter Be Divested by Any Act on the Part of the United States.

Attached to this brief as Appendix IV, are summaries of factual data and excerpts from documentary evidence, including excerpts from the Coleman Survey field notes and plats.

An exhaustive analysis of the mass of documentary evidence which directly or indirectly pertains to the Coleman Survey is not necessary because it has been conceded from the outset of this case that the Coleman Survey of the boundaries of Township 58 was accepted by the Commissioner of the General Land Office on December 20, 1892, as having been made according to the applicable law and regulation and that thereby and thereupon the exterior corners and boundaries of Township 58 were fixed and established and permanent corners were established along the East, West and South boundaries of said Township 58 at every half mile.

It is Wyoming's basic contention on this phase of its claim to Section 36, that this accepted United States survey of the boundaries of Township 58, in equity established the existence of Section 36 within said Township 58 and identified and located it within the rule developed and applied by this Court in the Railroad land grant cases.

Even under Plaintiff's theory of this case, it must be conceded that Wyoming's Enabling Act created in its favor at least an inchoate or floating interest or right in respect to the then designated unsurveyed school land sections.

Under this theory, said inchoate or "floating" right or interest did not attach to or become a vested equitable right, title or interest in any specific unsurveyed Section 16 or 36 until said lands were identified or became susceptible of identification through an accepted survey of at least the boundaries of the township in which said lands were situated.

It is the contention of the United States that this inchoate or "floating" right or interest had no significance at law or in equity until the acceptance of subdivisional township surveys which created said school land sections by establishing all of their corners and lines.

It is Wyoming's contention that the acceptance of the Coleman Survey of the corners and boundaries of the fractional Township 58 in question was sufficient in equity to identify or make susceptible of identification Section 36 and that thereupon Section 36 was appropriated to Wyoming's school land grant and reservation and was not thereafter subject to any other disposition by the United States.

The equitable rule or principle upon which this contention is founded is most frequently recognized, discussed and applied by this Court in connection with the construction and application of the provision of the Railroad land grant statutes in regard to the rights which the railroads acquired in the designated unsurveyed sections situated within the exterior limits or lines of the primary grant.

The earlier Railroad land grant statutes provided that, after the general route of the proposed railroad had been filed, the "odd sections of land hereby granted shall not be liable to sale or entry or preemption *before or after*

they are surveyed." It was uniformly held that this language constituted a withdrawal and appropriation of the unsurveyed odd numbered sections, within the limits of the primary grant, to the subject of the grant and that thereafter the United States could not make any other disposition of the said land. See *Southern Pac. R. Co.* v. *Orton,* 32 F. 457, *supra; Wood* v. *Burlington & Missouri River R.R. Co.,* 14 Otto 329, *supra;* and *St. Paul & P.R. Co.* v. *Northern Pac. R. Co.,* 139 U. S. 1, *supra.*

Most of the later Railroad land grant statutes provide that, during the time between the filing of the general route of the railroad and the establishment of the definite route of the road, the odd numbered sections within the limits of the primary grant are open to settlement or entry, but that upon the establishment of the definite route said odd numbered sections shall not be subject to preemption or homestead entry.

The Railroad land grant statutes are not uniform as to their terms and provisions and the decisions construing said grants have, from time to time, been modified. An analysis of these decisions, however, seems clearly to disclose that the interest or right of the railroad, in the unsurveyed odd numbered sections within the limits of the primary grant, was an inchoate or "floating" right or interest prior to the establishment of the definite route or location of the railroad, but that upon the establishment of the definite location of the road, the exterior boundaries or lines of the primary grant were, as a consequence thereof, fixed and established and the odd numbered, unsurveyed sections within said exterior lines became susceptible of identification, and thereupon the interest or right of the railroad thereto attached, and said lands, whether surveyed or unsurveyed, were not thereafter subject to any other disposition by the United States because they were, in equity, considered as reserved and appropriated to the

grant, even though there were no township or subdivisional surveys of said lands.

It also appears from analysis of the Railroad land grant decisions that the unsurveyed odd numbered sections, within the exterior boundaries of the primary grant, were held, as identified, or susceptible of identification, because their location on the ground could be determined with mathematical certainty by protraction.

The case of *Grinnell* v. *Chicago Rock Island & Pacific R.R. Co.*, 103 U. S. 739, is of peculiar and outstanding significance, because, in this case, this Court announced the basis for its rule that the interest or right of the railroad attaches, to the unsurveyed primary grant railroad lands, at the time the definite route of the road is established. The basis for this rule, as it is announced in the Grinnell Case, is that upon the establishment of the definite location of the road a surveyor, or the officers of the Land Department, could protract the line of the route of the railroad on the maps of the public lands within the exterior lines of the primary grant and thus identify the odd numbered sections within the limits of the primary grant. On this proposition, the Court said:

> "The grant under the Act of 1856 was, as has been often said, a grant *in praesenti*, and though exactly what this means has been the subject of much controversy, we think its ascertainment is not difficult. The only doubtful element of the problem is the location of the road, which, by the terms of these grants, is necessary to identify the sections granted on each side of it. Whenever that is done, so that a surveyor or the officers of the land department can protract the line of the route on the maps of the public lands within the limit of the grants, the identity of the lands granted is mathematically ascertained, and the title relates back to the date of the grant.
>
> "So far as lands are found in place when this is done, not coming within the exceptions as sold or held

under preemption, the title, or at least the right to this land in place, is at once vested in the State or in the company to which the State has granted it, and the means of ascertaining precisely what lands have passed by the grant is to be found in the map of the line of the road, which is filed in the General Land Office under the provisions of the statute. * * *" (Italics supplied.)

In *Cedar Rapids & M. R.R. Co.* v. *Herring,* 110 U. S. 27, the Court said:

"It is obvious, however, that the right to these odd sections, and the right to others in lieu of such odd sections as have been previously disposed of, depend upon very different circumstances, and it is not easy to see how rights can be vested in any particular section or sections of the latter class until it is ascertained how many of the original odd-numbered sections are thus lost, and until the grantee has exercised his right of selection. These latter, unlike the odd numbers within the six-mile limit, are not ascertained and made specific by the protraction of the established line through the maps of the public lands. They are not and cannot be made specific until the grantee's right of selection has been exercised."

In *Van Wyck* v. *Knevals,* 106 U. S. 360, the Court said:

"* * * The difficulty in immediately giving full operation to it arises from the fact that the sections designated as granted are incapable of identification until the route of the road is 'definitely fixed'. When that route is thus established the grant takes effect upon the sections by relation as of the date of the act of congress. In that sense we say that the grant is one *in praesenti.* * * * It matters not, so far as subsequent settlers are concerned, in what manner the title, which has passed out of the United States, is transferred to the company from the state. When the route of the road is 'definitely fixed' no parties can subsequently acquire a pre-emption right to any portion of the lands covered by the grant. The right of the state and of

the company is thenceforth perfect as against subsequent claimants under the United States." (Italics supplied.)

"* * * No further action is required of the company to establish the route. It then becomes the duty of the secretary to withdraw the lands granted from market. But if he should neglect this duty, the neglect would not impair the rights of the company, however prejudicial it might prove to others. Its rights are not made dependent upon the issue of the secretary's order, or upon notice of the withdrawal being given to the local land-officers. Congress, which possesses the absolute power of alienation of the public lands, has prescribed the period at which other parties than the grantee named shall have the privilege of acquiring a right to portions of the land specified, and neither the secretary nor any other officer of the land department can extend the period by requiring something to be done subsequently, and until done, continuing the right of parties to settle on the lands as previously. * * *".

In *Wisconsin Cent. R. Co.* v. *Price County*, 133 U. S. 496, the Court said:

"* * * The title conferred by the grant was necessarily an imperfect one, because, until the lands were identified by the definite location of the road, it could not be known what specific lands would be embraced in the sections named. The grant was, therefore, until such location, a float. But when the route of the road was definitely fixed, the sections granted became susceptible of identification, and the title attached to them and took effect as of the date of the grant, so as to cut off all intervening claims. * * * The road having been built as early as June, 1887, and supplied, as required, with appurtenances specified, the company was entitled to have the restrictions upon the use of the land released. It had then, to the eleven 40-acre parcels which were capable of identification, *an indefeasible right or title; it matters not which term be used.* * * *" (Emphasis added.)

In *Santa Fe Pac. R.R. Co.* v. *Lane*, 244 U. S. 492, 34 years had elapsed between the time of the definite location of the railroad and the subdivisional survey. During this time, and while the townships involved, with their odd numbered sections, were unsurveyed, said unsurveyed land was included in a forest reserve. This Court, however, held that the right of the railroad in said unsurveyed odd numbered sections had vested at the time the definite location of the road was established, and said odd numbered unsurveyed sections thereby became capable of identification and that thereupon said unsurveyed land was appropriated to the grant and was not subject to any other disposition by the United States. The Court said in part:

> "* * * There are millions of acres of unsurveyed lands within the primary limits of the unforfeited portion of the grant of 1866. See Senate Report, *supra*. *The plaintiff is entitled to many of the odd-numbered sections within the unsurveyed areas.* * * *" (Emphasis added.)

Obviously, these townships and their odd numbered sections had not been created by an accepted subdivisional survey of all of their lines at the time the equitable right or title of the railroad in said unsurveyed odd numbered sections was vested by the establishment of the definite location of the road. The establishment of the definite location of the road fixed, without even so much as a township survey, the exterior lines of the primary grant, and thereupon said unsurveyed townships, with their odd numbered sections, became susceptible of identification by protraction; and, in equity this was sufficient to vest an indefeasible right in the railroad ultimately to acquire legal title to said odd numbered sections when all of the lines of said sections might be established by an accepted subdivisional survey of the townships in which they were situated.

In *United States* v. *Northern Pac. Ry. Co.*, 311 U. S. 317, the Court said:

> "The ultimate obligation of the Government in respect of the indemnity lands is on the same plane as that respecting the lands in place. The only difference is in the mode of identification. Those in place are identified by filing the map of definite location, and the indemnity lands by selections made in lieu of losses in the place limits."

The provision of the statutory contract between the United States and the railroad relative to the right of the railroad, in regard to the unsurveyed odd numbered sections within the boundaries of the primary grant, is in substance similar to Wyoming's Enabling Act which provides that Sections 16 and 36, whether surveyed or unsurveyed, shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, but shall be reserved for school purposes only.

If Wyoming is placed on a par with the railroads, then it seems necessarily to follow that when Township 58 was created as a Congressional township by the acceptance of the Coleman Survey, which established its exterior corners and boundaries, and also corners along the East, West and South boundaries at every one-half mile, then under the equitable rule of this Court of identification through the protraction of established exterior boundaries, Section 36 was identified or became easily susceptible of identification and thereupon Wyoming's inchoate and floating right became a vested and indefeasible equitable right, title or interest in and to Section 36, and an obligation was created on the part of the United States under and by reason of which Section 36 was irrevocably appropriated to Wyoming's school land grant and reservation and was not thereafter subject to any other disposition, but stood, with legal title in the United States, reserved for a single and specified

use, purpose and trust, *i. e.*, on behalf of Wyoming for school purposes only.

Under Plaintiff's theory, a section in a township cannot be identified or become capable of identification except through an accepted United States Subdivisional Field Survey which establishes all of the lines of said section, thereby, from a technical standpoint, creating said section.

Under the decisions of this Court, it seems clear that the rule contended for by Plaintiff has no application in a court of equity where equitable obligations, rights and interests are involved rather than issues which pertain to technical legal title.

Not only have the courts held that a township or section therein may be in equity identified or made capable of identification by methods other than an accepted subdivisional field survey of all lines, but Congress itself has authorized and provided for the identification of entire townships by protraction or otherwise prior to the extension of the subdivisional field surveys to said lands.

The Act of February 28, 1891 (43 U. S. C. A. Sec. 681), provides in part:

> "* * * And it shall be the duty of the Secretary of the Interior, without awaiting the extension of the public surveys, to ascertain and determine, by protraction or otherwise, the number of townships that will be included within such Indian, military, or other reservations, and thereupon the State or Territory shall be entitled to select indemnity lands to the extent of two sections for each of said townships, in lieu of Sections 16 and 36 therein; * * *"

This statute not only provides that entire townships may be identified by protraction, but also provides that the existence or non-existence, within the exterior lines of such protracted townships, of Section 16 and 36 shall be determined as the basis for lieu selections.

Congress also by statute authorized railroads to make lieu selections of unsurveyed lands in which the lands selected should be described with reasonable certainty. The Northern Pacific Railroad Company made a lieu selection under this statute in which the land was described as being "Section 20 when surveyed". The 9th Circuit Court of Appeals in the case of *West* v. *Edward Rutledge Timber Co.*, 221 F. 30, in holding that such description was sufficient, said in part:

> "• • • Every one is presumed to know the method by which government surveys are made, and what is meant by township and range, and what by section and quarter section, or other legal subdivisions, and the relation of one township to another and of one section with its subdivisions to another. So that, for instance, if township 2 N. is surveyed, and a tract is described as section 1 in township 1 N., there could be no question that the tract was designated with a reasonable degree of certainty. It would be the section immediately south of surveyed section 36 in township 2 N. It is a maxim that that is certain which can be made certain, and its application would make the result perfectly manifest. Section 1 in that case would be tied directly to fixed monuments, to wit, the southeast corner of township 2, and the southeast and southwest corners of section 36 in that township. • • •
>
> "A description by legal subdivision is a perfectly intelligible designation of a tract of land, so it must follow that a description which will be a legal subdivision when surveyed, if lying adjoining a subdivision already surveyed, is also a perfectly intelligible description; and any one at all familiar with the government surveys could not be mistaken as to what was meant by the designation, and would be ready to locate the premises. Such a description would be absolutely good in a contract or deed, and would convey title."

This decision was affirmed by this Court in *West* v. *Edward Rutledge Timber Co.*, 244 U. S. 90.

Plaintiff contends that the rule as to the identification of unsurveyed lands situated within established exterior boundaries by protraction or the actual running on the ground of the interior lines, which has from early days prevailed in this Court, in regard to unsurveyed railroad grant lands, is not applicable to unsurveyed school grant lands. Plaintiff seems to feel that there is a difference in the background of the grants. This seems to be a distinction without a difference, because, in equity, rights predicated upon a trust or in good conscience have equal dignity regardless of the varying facts or circumstances which bind the conscience or create the trust. Upon analysis, the basic reason for this contention seems to be that never before, in any reported case involving the question of the time of the establishment of an indefeasible equitable right to school lands in the State, has the Court been presented with a situation where the township in which said school lands were situated had been established by an accepted survey of its boundaries years prior to an accepted interior subdivisional survey thereof. Under the applicable statute (43 U. S. C. A. Sec. 751), a township may be created and established by an accepted survey of its exterior boundaries years prior to an accepted subdivisional survey of the lands within the established boundaries of said township.

When Township 58 was surveyed by Coleman and his survey accepted by the Commissioner of the General Land Office, December 20, 1892, the State of Wyoming then and there obtained the equitable right, title and interest in and to said Section 36 and the same was thereupon and thereby withdrawn from any and all disposition of every kind and character by the United States and "reserved for school purposes only." Therefore, the Presidential Withdrawal of December 6, 1915, was null and void and of no force or effect as to this Section 36.

Upon the acceptance by the Commissioner of the General

Land Office on December 20, 1892, of the Coleman Survey of Township 58, it is obvious that the duly authorized officials of the United States and the State of Wyoming, acting within their authority, considered and treated this accepted survey of Township 58 as sufficient to establish the existence and location of Section 36 within said township. This naturally led Wyoming to assume that further activity on its part to bring about an accepted subdivisional survey of Township 58 was not necessary. Under this phase of the situation, as it is presented by the record and the Master's Finding of Fact Numbered 10, the rules and principles of law which affirmatively support Wyoming's claim to Section 36 are supplemented and emphasized by the presence of all of the elements of an equitable estoppel. *United States* v. *Denver & R. G. & W. R. Co.*, 160 F. (2d) 374 (8th Cir.); *New Mexico* v. *Texas*, 275 U. S. 279; *Tubbs* v. *Wilhoit*, 138 U. S. 134; *Dayton Airplane Co.* v. *United States*, 21 F. (2d) 673; *State of Iowa* v. *Carr*, 191 F. 257 (8th Cir., Judge Sanborn); *Knapp-Monarch Co.* v. *Commissioner of Int. Rev.*, 139 F. (2d) 863; *Ritter* v. *United States*, 19 F. (2d) 251 (D. C. Penn.); *Shooters Island S. Co.* v. *Standard Shipbuilding Corp.*, 293 F. 706, 715 (3rd Cir.); *United States* v. *Midway Northern Oil Co.*, 323 F. 619 (D. C. Cal.); *Pan-American Petroleum & Transport Co.* v. *United States*, 273 U. S. 456.

Plaintiff, by the line of authorities which is to the effect that an accepted subdivisional survey is necessary to the creation of the sections of a township, seeks to avoid the application in this case of the equitable rule of susceptibility of identification which becomes operative upon the establishment of exterior boundaries.

In the instant case the controlling question presented by this division of Defendants' brief does not concern the essential elements of a legal title. The question of paramount significance here is concerned with the circumstances

which, in equity, are deemed sufficient to create and vest in Wyoming an indefeasible, equitable right ultimately to acquire legal title to lands which are admittedly identified or susceptible of identification because they are situated within the exterior boundaries of a township established by an accepted United States survey thereof.

The question under discussion is therefore substantially identical to the question which was presented and ruled upon by this Court in the Railroad land grant cases heretofore referred to.

The cases relied upon by Plaintiff go no further than Plaintiff's basic contention which seems to be that legal title to a Section 36 could not vest in Wyoming until the Commissioner of the General Land Office had approved an official survey of all the lines of the section.

Plaintiff has presented no case in which this Court or any other court has considered the question of the sufficiency in equity of the identification of school lands under a grant and reservation in an Enabling Act similar to Wyoming's, where the school land involved was situated within the boundaries of a township which had been established by an accepted United States Survey.

As to this phase of Wyoming's claim to Section 36, the paramount and significant circumstance which distinguishes this case from any and all of the cases cited and relied upon by Plaintiff, is the fact that in 1892, at the request of Wyoming, for the purpose of selecting its quantity school lands and of identifying its "place" school lands, the United States made a survey of the boundaries of Township 58 and said survey was accepted by the Commissioner of the General Land Office. It is this accepted United States Survey of the boundaries of Township 58, plus the language of Wyoming's Enabling Act, which provides that the designated school land sections

granted to Wyoming "shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only", which presents to the Court in this case, a situation which, as far as school land grants and reservations are concerned, is admittedly unique. We submit, however, that it is a situation which is strikingly analogous to the situation presented to this Court in the Railroad land grant cases where the language of the early Railroad land grant statutes was substantially similar to the language of Wyoming's Enabling Act, above quoted, and where as here, unsurveyed lands became susceptible of identification by the establishment of exterior boundaries of a large tract of land within which the unsurveyed lands in question were situated.

It is, of course, Wyoming's contention that the wording of the school land grant of its Enabling Act was intended by Congress to vest in Wyoming an equitable right to the designated unsurveyed school sections and that this right was not dependent upon a survey of any type or character. This is unquestionably the result which Congress intended should be brought about by the school land reservation of Wyoming's Organic Act which looked to said grant.

Wyoming, however, under the circumstances presented in this case, is not committed to a claim to Section 36 predicated alone upon the language of its Enabling Act, because it is not essential in this case that it be determined as a separate, distinct and controlling proposition of law that the wording of Wyoming's Enabling Act created a vested, equitable right in Wyoming ultimately to acquire legal title to every unsurveyed Section 16 or 36 within Wyoming, and not disposed of at the date of its Enabling Act, for in this case we not only have the language of Wyoming's Enabling Act which is substantially similar to the wording of the early Railroad land grant statutes, but we

also have an accepted United States survey of the exterior boundaries of Township 58. Under the established rule of this Court, this was sufficient to identify Section 36 or make the same susceptible of identification, and even though it be assumed that theretofore Wyoming's right to Section 36 was inchoate and unvested, such inchoate right became immediately, upon the acceptance of the survey of the exterior boundaries of Township 58, a vested indefeasible equitable right or title in and to Section 36, under which Section 36 thereafter stood reserved to Wyoming for school purposes only, with legal title to vest upon the acceptance of a subdivisional survey of Township 58.

III.

The Legal Title to Section 36 Vested in Wyoming on July 27, 1916, When the Commissioner of the General Land Office Accepted the Davis Subdivisional Survey of Township 58.

Plaintiff alleged and proved that on July 27, 1916, a subdivisional field survey of Township 58 was accepted by the Commissioner of the General Land Office.

Thereupon, Wyoming's theretofore indefeasible equitable right or title to Section 36 became a full and complete legal title. *United States* v. *Morrison*, 240 U. S. 192; *Deseret Salt Co.* v. *Tarpey*, 142 U. S. 160; *United States* v. *Montana L. & M. Co.*, 196 U. S. 573. This legal title related back to the time of the vesting in Wyoming of its equitable right, title and interest in said Section 36. *Tubbs* v. *Wilhoit*, 183 U. S. 134, and *Work, Secretary*, v. *Louisiana*, 269 U. S. 250.

IV.

Wyoming Was and Is Entitled to a Finding of Fact and a Conclusion of Law to the Effect That Section 36 Was Not "Known Mineral Land" on or Prior to December 20, 1892.

Plaintiff had the burden of proof on all of the issues involved in its asserted title, including Plaintiff's allegation and contention that the land involved was known mineral land at the vital time.

44 Am. Jur., p. 67:

> "The complainant in an action to quiet title, to remove a cloud thereon, or to determine an adverse claim, has the burden of proof as to all issues arising upon the essential allegations of the complaint. He must prove title in himself if the answer denies his title or if the defendant claims title adversely. He must also assume the burden of showing compliance with conditions precedent to his right to relief. * * *"

It is elementary that if a plaintiff fails to introduce evidence in support of an issue made up by the pleadings, upon which plaintiff has the burden of proof, then the defendant is entitled to a finding against the plaintiff upon said issue.

Dillon Implement Co. v. *Cleaveland*, 32 Utah 1, 88 P. 670, 672:

> "* * * If the evidence was insufficient, or if there was no evidence in their support, the findings of fact should have been against the party upon whom was the burden of proof. *Golson* v. *Dunlap*, 73 Cal. 161, 14 Pac. 576."

Arizona Commercial Mining Co. v. *Iron Cap Copper Co.*, 29 Arizona 23, 239 P. 290, 294:

> "Second, where no evidence is introduced in regard to an issue, or the evidence introduced is insufficient

to support it, the finding thereon should be against the party having the burden of proof, and an omission of the findings to cover a particular fact or issue is to be deemed a finding on that fact or issue against the party having the burden of proof. 38 Cyc. 1985."

AS TO THE ACCOUNTING PHASE OF THE CASE IN THE EVENT IT SHOULD BECOME OPERATIVE.

1. *Plaintiff concedes that The Master correctly disposed of all accounting issues and these questions are settled in the event the Court should determine the title issue in favor of Plaintiff and should also confirm the disposition made by The Master of the question of Defendants' good faith. If the Court finds that the record does not support the Finding of The Master as to the Defendants' good faith, the case should be referred back to The Master for further hearing on this point.*

If the judgment in this case is for Wyoming on either or both of its contentions as to title, then there is no accounting phase of the case for consideration.

As we understand Plaintiff's brief (p. 42), Plaintiff concedes that The Master correctly disposed of all accounting questions and matters, excepting royalties, if Defendants acted in good faith.

Plaintiff, however, contends that The Master erred in his ruling that the good faith of Defendants was admitted by Plaintiff's Complaint.

It therefore appears that all accounting questions, except the one concerning royalties, are settled in this case in the event the Court should determine the title issue in favor of Plaintiff and should also confirm and approve the disposition made by The Master on the question of Defendants' good faith.

We submit that The Master correctly disposed of this matter for the reasons set forth in his Report at pages 24 to 37. (R. 449-457.)

Plaintiff, by its Complaint, in substance and effect alleged that Wyoming and its lessee, The Ohio Oil Company, entered upon and occupied the lands in question under color of title. This, plus the absence of any allegation of bad faith, was, as The Master correctly ruled, an admission or concession by the Plaintiff of the good faith of the Defendants.

Searl v. *School-Dist. No. 2*, 133 U. S. 553, 10 S. Ct. 335, 337:

> "* * * As remarked by Beckwith, J., in *McCagg* v. *Heacock*, 34 Ill. 476, 479: 'The good faith required by the statute, in the creation or acquisition of color of title, is a freedom from design to defraud the person having the better title;' and 'the knowledge of an adverse claim to or lien upon property does not, of itself, indicate bad faith in a purchaser, and is not even evidence of it, unless accompanied by some improper means to defeat such claim or lien.' "

Apart from any question of pleading or trial procedure, the record in this case contains ample proof to support The Master's Findings of the good faith of the Defendants even though he refused the evidence offered by the Plaintiff.

The applicable terms and provisions of Wyoming's Organic Act; the applicable terms and provisions of Wyoming's Enabling Act; the applicable proceedings of Wyoming's Constitutional Convention and the applicable provisions of Wyoming's Constitution; the request of Wyoming for a survey and the acceptance thereof by the Commissioner of the General Land Office, December 20, 1892; the existence in the local United States Land Office of a plat of Township 58 showing Section 36 marked as "School Land" (R. 117, 118); the public leasing of said Section 36 by the State of Wyoming for oil and gas; the

continuous, peaceful, uninterrupted and actual possession by Defendants since 1917, and their open and well known development and operation of said lands for oil and gas, all constitute a background in this case which, in and of itself, necessitates the elimination of any question of bad faith and abundantly supports The Master's Ruling that "The Ohio Oil Company is there (in possession) under a claim of right and is not a willful trespasser, and it is not necessary for The Ohio Oil Company [fol. 244] or the State of Wyoming to offer any proof on that." (R. 141.)

On pages 52-57 of Plaintiff's Brief appears a discussion of certain documents offered by Plaintiff on the question of good faith, which were rejected by The Master. At the conclusion of this discussion of these rejected documents, it is asserted that, because of inferences which counsel draw from some of these documents, plus the fact that the Ohio did not introduce evidence on a matter which The Master had ruled was not in issue, the Ohio should be held to be a bad faith trespasser and liable for the value of the full production.

It is difficult to understand why such a shockingly unfair proposition should be advanced by counsel. There is, however, no difficulty in establishing its obvious invalidity as a procedural proposition. This has been done as well or better than we could do it by Plaintiff's counsel in their Opening Brief before The Master on page 47, where it is said:

> "If the Supreme Court holds for the Government on the title issue the accounting issue will be reached. If the Court adopts the Master's view of the law on the issue of wilful trespass the case will be concluded. If the Court agrees with the Government's view of the wilful trespass issue, it is doubtful that a final decree could be entered since the record does not present the issue of wilful trespass on the merits.
>
> "The Government submits that on the present record on the issue of damages there is a reasonable possibility that the Supreme Court could not dispose of the

case on the first presentation. Consideration should therefore be given to reopening this case for the purpose of formulating a full record which will permit final disposition of the case whether the Court adopts the Master's view or the Government's view of the law with respect to wilful trespass."

We submit that if the Court finds in favor of Plaintiff on the title and also finds that The Master erred in ruling that good faith was not an issue in this case and that The Master's Finding of good faith of Defendants is not supported by the record, then this case should go back to The Master for disposition of this question in keeping with the directions of the Court.

2. *The Master properly refused to recommend a joint and several judgment against the Defendants for the royalties paid Wyoming because the existing deficit of $64,479.74 exceeds the royalty payments by $47,173.44.*

In The Master's Finding of Fact No. 13, he shows that the Defendant The Ohio Oil Company received, as gross proceeds from the development and operation of Section 36, the total sum of $168,317.53, and that it had made a total expenditure therefor in the amount of $232,797.27, including royalty payments made to Defendant the State of Wyoming, amounting to $17,306.30. Obviously the operation shows a deficit of $64,479.74, including said royalty payments. This sum exceeds the amount paid by Defendant The Ohio Oil Company to Defendant the State of Wyoming by $47,173.44.

The Master reached a proper conclusion when he refused to recommend a joint and several judgment, against Defendants for any royalties paid by Ohio to Wyoming, until it appeared, upon a future accounting, that the Ohio had received income in an amount in excess of its production costs as allowed by The Master, plus the amount paid by it

in royalties to the State; for, until this point is reached, The Ohio Oil Company will not have recouped its total costs; such a judgment would necessarily inflict an additional loss upon the Ohio by reason of its development and operation of said lands in good faith.

Conclusion.

We respectfully submit that The Special Master's Findings of Fact and Conclusions of Law should be modified and changed to conform to the Defendants' Exceptions thereto, and that a decree pursuant to and in keeping with said modified Findings of Fact and Conclusions of Law be entered dismissing the Plaintiff's Complaint and quieting Wyoming's title to Section 36, and allowing Defendants their costs and disbursements herein.

Respectfully submitted,

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APPENDIX I.

Pertinent Provisions of Organic Acts of Several of the States in Chronological Order.

1848—Aug. 14; **Oregon** (9 Stat. at L. 323):

Section 20. "When the lands in the said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market, sections numbered sixteen and thirty-six in each township in said territory shall be, and the same is hereby, reserved for the purpose of being applied to schools in said territory, and in the states and territories hereafter to be erected out of the same."

1849—Mar. 3; **Minnesota** (9 Stat. at L. 403):

Section 18. (Identical to Section 20 of the Oregon Organic Act.)

1850—Sept. 9; **New Mexico** (9 Stat. at L. 446):

Section 15. (Identical to Section 20 of the Oregon Organic Act.)

—Sept. 9; **Utah** (9 Stat. at L. 453):

Section 15. (Identical to Section 20 of the Oregon Organic Act.)

1853—Mar. 2; **Washington** (10 Stat. at L. 172):

Section 20. "And be it further enacted, That when the lands in said Territory shall be surveyed under the direction of the Government of the United States preparatory to bringing the same into market or otherwise disposing thereof, sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby, reserved for the purpose of being applied to common schools in said Territory. And in all cases where said sections sixteen and thirty-six, or either or any of them, shall be occupied by actual settlers prior to survey thereof, the County Commissioners of the counties in which said sections so occu-

pied as aforesaid are situated be, and they are hereby authorized to locate other lands to an equal amount in sections, or fractional sections, as the case may be, within their respective counties, in lieu of said sections so occupied as aforesaid."

1854—May 30; **Nebraska** (10 Stat. at L. 277):

Section 16. (Identical to Section 20 of the Oregon Organic Act.)

—May 30; **Kansas** (10 Stat. at L. 277):

Section 34. (Identical to Section 20 of the Oregon Organic Act.)

1861—Feb. 28; **Colorado** (12 Stat. at L. 172):

Section 14. (Identical to Section 20 of the Oregon Organic Act, except the words "and territories" were deleted.)

—Mar. 2; **Dakota** (12 Stat. at L. 239):

Section 14. (Identical to Section 20 of the Oregon Organic Act, except the words "and territories" were deleted.)

Note: This Act is the Organic Act of the States of North Dakota and South Dakota.

—Mar. 2; **Nevada** (12 Stat. at L. 209):

Section 14. (Identical to Section 20 of the Oregon Organic Act, except the words "and territories" were deleted.)

1863—Mar. 3; **Idaho** (12 Stat. at L. 808):

Section 14. (Identical to Section 20 of the Oregon Organic Act.)

1864—May 26; **Montana** (13 Stat. at L. 85):

Section 14. (Identical to Section 20 of the Oregon Organic Act.)

1868—July 25; **Wyoming** (15 Stat. at L. 178):

Section 14. "That sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby reserved for the purpose of being applied to public schools in the state or states hereafter to be erected out of the same."

APPENDIX II.

Grants by Enabling or Other Acts of School Lands to Several of the States in Chronological Order, Prior and Subsequent to the Decision by the United States Supreme Court in the Case of Heydenfeldt v. Daney Gold, etc., Co., 93 U. S. 634.

1853—Mar. 3; **California** (10 Stat. at L. 246):

Sec. 6. "* * * That all the public lands in the State of California, whether surveyed or unsurveyed, with the exception of sections sixteen and thirty-six, which shall be and hereby are granted to the State for the purposes of public schools in each township, and with the exception of lands appropriated under the authority of this act, or reserved by competent authority, and excepting also the lands claimed under any foreign grant or title and the mineral lands, shall be subject to the preemption laws of fourth September, eighteen hundred and forty-one, with all the exceptions, conditions, and limitations therein, except as is herein otherwise provided; * * *"

Sec. 7. "* * * That where any settlement, by the erection of a dwelling-house or the cultivation of any portion of the land, shall be made upon the sixteenth and thirty-sixth sections, before the same shall be surveyed, or where such sections may be reserved for public uses or taken by private claims, other land shall be selected in lieu thereof, agreeable to the provisions of the act of Congress approved on the twentieth of May, eighteen hundred and twenty-six, entitled "An act to appropriate lands for the support of schools in certain townships and fractional townships, not before provided for," and which shall be subject to approval by the Secretary of the Interior. And no person shall make a settlement or location upon any tract or parcel of land selected for a military post, or within one mile of such post, or on any other lands reserved by competent authority; nor shall any person obtain the benefits of this act by a settlement or location on mineral lands."

1857—Feb. 26; **Minnesota** (11 Stat. at L. 166):

Sec. 5. "* * * That sections numbered sixteen and thirty-six in every township of public lands in said State, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands, equivalent thereto and as contiguous as may be, shall be granted to said State for the use of schools."

1859—Feb. 14; **Oregon** (11 Stat. at L. 383):

Sec. 4. "* * * First, That sections numbered sixteen and thirty-six in every township of public lands in said state, and where either of said sections, or any part thereof, has been sold or otherwise been disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to said state for the use of schools. * * *"

1861—Jan. 29; **Kansas** (12 Stat. at L. 126):

Sec. 3. (Identical to Sec. 5 of Minnesota Enabling Act.)

1864—Mar. 21; **Nevada** (13 Stat. at L. 30):

Sec. 7. (Identical to Sec. 5 of Minnesota Enabling Act.)

—Apr. 19; **Nebraska** (13 Stat. at L. 47):

Sec. 7. (Identical to Sec. 5 of Minnesota Enabling Act.)

1875—Mar. 3; **Colorado** (18 Stat. at L. Part 3, 474):

Sec. 7. (Identical to Sec. 5 of Minnesota Enabling Act.)

1877—Mar. 1; Note: Decision in *Heydenfeldt* v. *Daney Gold etc. Co.*, 93 U. S. 634.

1889—Feb. 22; **Washington, Montana, North Dakota, South Dakota.** Note: These four states came in under the Act of Feb. 22, 1889 (25 Stat. at L. 676).

Sec. 10. "That upon the admission of each of said states into the Union, sections numbered sixteen and

thirty-six in every township of said proposed states, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of congress, other lands equivalent thereto, in legal subdivision of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said states for the support of common schools, such indemnity lands to be selected within said states in such manner as the legislature may provide, with the approval of the Secretary of the Interior: * * *"

Sec. 11. "That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price of not less than ten dollars per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

1890—July 3; **Idaho** (26 Stat. at L. 215):

Sections 4 and 5. (Substantially the same as Sections 10 and 11 of Washington, et al., Enabling Act.)

—July 10; **Wyoming** (26 Stat. at L. 222):

Sec. 4. Note: This section identical to Section 4 of the Enabling Act of Idaho, except there is added the following:

"Provided, That Section 6 of the act of congress of August 9, 1888, entitled "an act to authorize the leasing of the school and university lands in the Territory of Wyoming, and for other purposes," shall apply to the school and university indemnity lands of the said state of Wyoming so far as applicable."

Sec. 5. (Identical to Section 5 of Idaho Enabling Act.)

APPENDIX III.

Legislative History Relating to the Origin in School Land Grants of the Provision: "Such Sections Shall Not Be Subject to Pre-emption or Entry, Whether Surveyed or Unsurveyed, But Shall Be Reserved for School Purposes Only."

The Enabling Act for the States of Washington, Montana, North Dakota and South Dakota was the first act to contain the provision "such sections shall not be subject to pre-emption or entry, whether surveyed or unsurveyed, but shall be reserved for school purposes only". This act originated in the Senate as S. 185. The legislative history relating to the bill is as follows:

Dec. 12, 1887:

Introduced in the Senate as "A bill to provide for the admission of the State of Dakota, into the Union, and for the organization of the Territory of Lincoln."

Referred to Committee on Territories. (50th Congress, 1st Session, page 33—Senate Journal.)

Jan. 23, 1888:

Reported back to the Senate by the Committee (Report No. 75), with amendment. (50th Congress, 1st Session, page 194—Senate Journal.)

In the amended bill of the Committee, as amended, Section 6 (Vol. 19, Part 3, page 2802, Cong. Record, 50th Congress, 1st Session) appeared as follows:

Sec. 6. "That sections 16 and 36 in every township of the public lands of the United States within said state, and where such sections, or any part thereof, shall be mineral lands, or shall have been sold or otherwise disposed of by the United States according to law, other lands equivalent thereto,

in legal subdivisions of not less than one-quarter section, are hereby granted to the said State for the support of common schools, and such sections shall not be subject to preemption or entry, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

Jan. 25, 1888:

The minority of the Committee on Territories submitted an amendment in which Section 10 (Vol. 19, Part 3, page 2832, Cong. Record, 50th Congress, 1st Session) appeared as follows:

Sec. 10. "That sections numbered 16 and 36 in every township in said proposed State of South Dakota, and where such sections or any subdivisions thereof, have been sold or otherwise disposed of, by or under authority of any Act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said proposed state for the support of common schools."

Apr. 19, 1888:

The amendment submitted by the Minority of the Committee on Territories (Section 10, *supra*), was rejected. (50th Congress, 1st Session, page 695—Journal.)

Apr. 19, 1888:

Amended bill of the Committee on Territories, as amended, was agreed to. The bill was then read the third time and passed. (50th Congress, 1st Session, page 696—Journal.)

Apr. 20, 1888:

S. 185 reported to the House. (50th Congress, 1st Session, page 1701—House Journal.)

Apr. 21, 1888:

Referred to Committee on Territories. (50th Congress, 1st Session, page 1708—House Journal.)

Jan. 15, 1889:

The bill came before the House for consideration and the Committee offered an amendment which struck out all the provisions after the Enacting clause, and this amendment became known as the "substitute bill", or "omnibus bill". The provisions relating to the school land grants were as follows:

Sec. 7. "That Sections numbered sixteen and thirty-six in every township of said proposed states, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said states for the support of common schools, * * *"

Sec. 12. "That all lands herein granted for educational purposes, except as hereinafter otherwise provided, shall be disposed of only at public sale, and at a price of not less than $10.00 per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in support of said schools. But said lands may, under such regulations as the Legislatures shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company. In all cases where actual settlers have located, resided upon, and made valuable improvements on section 16 or 36, prior to the first day of January, 1890, with the intention in good faith of purchasing such lands from the State upon its admission, the respective Legislatures may provide for disposing of so much of the lands so settled upon, to such settlers, their heirs, or legal representatives, at a price not less than $6.00 per acre, to be fixed by appraisement of the value of the lands exclusive of improvements. * * *"

(Vol. 20, Part 1, page 807, Cong. Record, 50th Congress, 2d Session.)

Jan. 17, 1889:

In the debate on the substitute bill, Mr. Macdonald of Minnesota made the following remarks with reference to Section 12:

"Being a Western Representative, I have two or three serious objections to raise to certain provisions contained in the substitute of the gentleman from Illinois. Section 12 of that substitute contains a provision which certainly ought not to be included in this Act. If gentlemen will refer to that section of the substitute they will find that it provides for the disposal of school lands to purchasers at a price not less than $10.00 per acre; but, in a provision beginning in line 9 of that section, the substitute provides that in all cases where settlers shall have located upon such school lands prior to the 1st day of January, 1890, with the intention in good faith, of purchasing the lands, they can procure them at $6.00 per acre. Now, I do not believe there is a Western gentleman here or others who have had such experience as we have had—indeed it does not require that a man should have had any experience in the West for him to know, in view of the weaknesses of human nature, that, before January, 1890, with that clause in this act, there would not be a valuable school section in either North or South Dakota that would not be 'settled upon' and taken at $6.00 per acre, by parties who would go and locate upon them between now and that date." (Vol. 20, Part 1, page 900, Cong. Record, 50th Congress, 2d Session.)

Following the foregoing remarks of Macdonald, Section 12 was amended by striking the words: "1st day of January, 1890", and there was inserted in lieu thereof the following:

"survey of said section or the passage of this act." (Vol. 20, Part 2, page 946, Cong. Record, 50th Congress, 2d Session.)

Section 7 was also amended by adding thereto the following:

"Provided, that the rights of all settlers on un-

surveyed lands under the general land laws, upon lands found upon survey to be within sixteenth or thirty-sixth sections, where their settlements were made before survey, or the approval of this act, shall be preserved, and where payment shall be required it shall be at the rate of $1.25 per acre." (Vol. 20, Part 2, page 948, Cong. Record, 50th Congress, 2d Session.)

Jan. 18, 1889:

S. 185 as amended by the substitute bill, and the amendments to the substitute bill, was passed by the House. (50th Congress, 2d Session, page 951—Vol. 20, Part 1, Cong. Record.)

Jan. 19, 1889:

S. 185 returned to Senate and referred to Committee on Territories. (50th Congress, 2d Session, Part 1, page 991—Vol. 20, Cong. Record.)

Feb. 1, 1889:

Reported back to Senate from the Committee on Territories with the recommendation that the House amendment be not concurred in, and asking for conference. Conferees were appointed consisting of Platt, Cullom and Butler. (50th Congress, 2d Session, Part 2, page 1390, Vol. 20, Cong. Record.)

Feb. 2, 1889:

The non-concurrence of the Senate to S. 185 reported to the House and the following conferees were appointed: Springer, Barnes and Baker. (50th Congress, 2d Session, Part 2, page 1426—Vol. 20, Cong. Record.)

Feb. 20, 1889:

The Conference Committee reported back to the Senate upon the bill, agreed upon by the Committee. Such bill contained the following provisions:

Sec. 10. "That upon the admission of each of said states into the Union, sections numbered 16 and 36 in every township of said proposed states,

and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter-section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said States for the support of common schools, such indemnity lands to be selected within said States in such manner as the Legislature may provide, with the approval of the Secretary of the Interior: * * *"

Sec. 11. "That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than ten dollars per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the Legislatures shall prescribe, be leased for periods of not more than five years, in quantities not exceeding 1 section to any one person or company; and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

(Vol. 20, Part 3, pp. 2095-2096, Cong. Record, 50th Congress, 2d Session.)

Conference Committee report adopted by Senate. (Vol. 20, Part 3, page 2104, Cong. Record, 50th Congress, 2d Session.)

Feb. 20, 1889:

The House Conferees reported the agreed bill back to the House. (Vol. 20, Part 3, page 2113, Cong. Record, 50th Congress, 2d Session.)

A statement prepared by the House Conferees explaining the agreed bill was read to the House, and such statement contained the following:

"The provisions in regard to the public lands are retained substantially as passed by the House,

with the exception that the proviso in regard to the settlement of the sixteenth and thirty-sixth sections of unsurveyed lands is stricken out, and it is provided that such lands shall not be subject to preemption, homestead entry, or any other entry under the laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only." (Vol. 20, Part 3, page 2116, Cong. Record, 50th Congress, 2d Session.)

Conference Committee report adopted by House. (Vol. 20, Part 3, page 2116, Cong. Record, 50th Congress, 2d Session.)

Also, in connection with this act, there were numerous bills in previous sessions dealing with the admission of these states.

In the 49th Congress, 1st Session, for example, S. 967 relating to the admission of the State of Dakota and the organization of the Territory of Lincoln, was introduced and acted upon. (Pages 153 and 254—Senate Journal.)

In the same Congress, same Session, S. 67, relating to the admission of the State of Washington, was introduced and acted upon. (Vol. 17, Part 1, page 123, Cong. Record, 49th Congress, 1st Session.)

When the Senate was considering S. 67, Harrison of Indiana, in regard to land grants to the states, stated as follows:

> "I may say to the Senate that nearly the entire vacation of the Senate during the holidays was spent by me in carefully examining the precedents as to land grants and courts in the case of Dakota, and the bill as originally introduced was crowded on every page of it with amendments that were made as a result of my observation and study. It is a subject that requires care." (Vol. 17, Part 3, page 3257, Cong. Record, 49th Congress, 1st Session.)

APPENDIX IV.

The Coleman Survey.

Letter of March 7, 1892:

The State of Wyoming, by letter dated March 7, 1892, made the following request of the United States:

> "The State Board of Control is charged with the duty of selecting the lands donated by the United States Government to the State of Wyoming, at the time of its admission. In order that these selections may be made without delay the Board requests that you cause to be surveyed and subdivided as speedily as possible, the following named townships, to-wit: * * * Township 58 North, Range 100 West * * *." (R. 188.)

Coleman Contract No. 247, March 8, 1892:

Pursuant to such request, contract No. 247 was entered into by the United States with one Augustus L. Coleman on March 8, 1892. Under said contract Coleman was bound to survey, amongst others, Township 58 North, Range 100 West, embracing the Section 36 in controversy:

> "* * * in strict conformity with the laws of the United States, the printed Manual of Surveying Instructions, and other surveying instructions issued by the Commissioner of the General Land Office, and with such special instructions as he may receive from the said Surveyor General in conformity therewith (all of said instructions to be taken and deemed a part of this contract), will well, truly, and faithfully survey, mark, and establish * * * the exterior and subdivisional lines of townships 57 north, ranges 97, 98, 99, 100, 101 and 102 west, and of fractional townships 58 north, ranges 97, 98, 99, 100, 101 and 102 west of the

6th Principal Meridian, Wyoming, and that he will complete these surveys, in the manner aforesaid, * * *."

"And the said Surveyor General, in his official capacity aforesaid, covenants and agrees with the said Augustus L. Coleman that on the completion of the surveys above named, in the manner aforesaid, there shall be paid to the said Augustus L. Coleman by the Treasury Department of the United States, as a full compensation for all work performed under this agreement, * * * for every mile actually run and marked in the field, * * *; Provided, however, that no payment shall be made until the plats and field notes of the surveys executed under this contract shall have been accepted by the Commissioner of the General Land Office."

"It is further agreed by and between the parties to this agreement that no accounts shall be paid unless properly certified by the said Surveyor General (or his successor in office) that the surveys are in accordance with the instructions herein referred to and the provisions of this agreement, and until approved plats and certified transcripts of field-notes of the surveys for which the accounts are rendered are filed in the General Land Office."

"And it is further understood and agreed * * * that the said surveys will not be approved by the said Surveyor General * * * unless they shall be found to be in exact accordance with the instructions hereinbefore specified: * * *." (R. 188B.)

Special Instructions, March 11, 1892:

As a part of said contract and attached thereto are special instructions dated March 11, 1892, which state in part that:

"The following special instructions are supplemental to the Manual dated January 1, 1891,[1] and with the

1. This reference is to Manual of Instructions of January 1, 1890; see statement of counsel at page 85 of Record.

Manual form a part of your contract No. 247, dated March 8, 1892, and are issued for your governance in matters pertaining to the surveys embraced in said contract, and which are not provided for in the printed manual."

"* * * You will survey and establish the north boundary of township 57 N., Rg. 100 west by running west on a random line from the corner of townships 57 and 58 N., Rgs. 99 and 100 west to the 12th Auxiliary Meridian West, setting temporary corners at each 40 and 80 chains, and return thence on a true line permanently establishing the temporary corners in their proper places.

"The survey of the lands embraced in your contract has been requested by the State Board of Control, a Board authorized by the Legislature to select the lands donated to the State by the General Government, and in view of the fact that it will be impossible, in advance of the surveys, to designate the lands which the Board of Control will select for State purposes, you are instructed to subdivide in full every township containing lands valuable for any purpose and upon which you enter for subdivisional work. Utter impracticability on account of rugged character of the land, or exhaustion of the appropriation, will be the only valid excuse for leaving unsurveyed section lines in any township upon which you have entered for subdivisional work." (R. 190.)

Letter to Commissioner of General Land Office, April 11, 1892:

The said contract and special instructions were forwarded to the Commissioner of the General Land Office by the Surveyor General with letter of April 11, 1892, in which it is stated:

"* * * I inclose letter from the State Board of Control asking for the survey of the townships embraced in this contract on the ground that the State desires to make selections of land within said tract." (R. 187.)

Commissioner Approves Coleman Contract April 28, 1892:

Said Contract No. 247, of March 8, 1892, was approved by the Commissioner of the General Land Office on April 28, 1892. (R. 188A.)

Coleman Survey Examined by Surveyor General:

On August 5, 1892, the Surveyor General requested permission to make a field examination of the surveys executed under said Contract No. 247. (R. 193.)

On August 11, 1892, the Commissioner of the General Land Office authorized the Surveyor General "* * * to make a personal inspection of the surveys executed under the contracts above referred to." (R. 195.)

Completion of Coleman Survey:

The letter of November 26, 1892, from the Surveyor General to the Commissioner of the General Land Office, and the plats therein referred to are of particular significance. Such letter is as follows:

"I forward herewith, in separate packages, for your approval, the plats and transcripts of field notes of surveys executed by Augustus L. Coleman, U. S. Deputy Surveyor, under his contract No. 247, dated, March 8, 1892. The returns of this survey embrace the following lines and transcripts, viz:

1 plat of exterior lines and eleven plats of subdivisional lines, in all 12 plats.
1 transcript of the 14th Standard Parallel.
1 transcript of the 12th Guide and 12th Auxiliary Meridians.
2 transcripts of the exterior lines.
11 transcripts of subdivisional lines.

15 transcripts in all.

"This contract and the special instructions thereunder were approved by you in your letter 'E', dated April 28, 1892.

"I also inclose the transcript of field notes of examination of the above surveys made by myself under authority contained in your letter 'E' dated Aug. 11, 1892." (R. 196.)

Coleman Survey Accepted December 20, 1892:

The Coleman Surveys, plats and field notes and the field examination thereof by the Surveyor General, transmitted to the Commissioner of the General Land Office by the Surveyor General with his letter of November 26, 1892, were found satisfactory and were accepted by the Commissioner of the General Land Office on December 20, 1892, as follows:

"* * * Said surveys are considered satisfactory, and are hereby accepted, * * *" (R. 235.)

Moreover, on January 5, 1893, the Commissioner certified that the sum of $3,757.17

"* * * is due from the United States unto the said Augustus L. Coleman for surveying done by him in Wyoming under contract of March 8, 1892, No. 247, for his account therefor, as certified on the 26th day of Nov. 1892, by Wm. A. Richards, Surveyor-General of Wyoming, which has been compared by this office with the approved plat of the surveys thus executed and found correct; * * *" (R. 235.)

Corners and Boundaries Established by Coleman.

Common Corner to Townhips 57 and 58 North, Ranges 99 and 100 West:

On June 6, 1892, Coleman

"Set a sandstone 18x14x13 ins. 12 ins. in the ground for cor. to Tps. 57 and 58 N., Rs. 99 and 100 W., marked T. 58 on N. E., R. 99 on S. E. T. 57 on S. W. and R. 100 on N. W. faces with 6 notches on each edge, dug pits 24x18x12 ins., lengthwise on each line, N. S. E. and W. of stone 6 ft. dist. and raised a mound of earth, 2½ ft. high, 5 ft. base alongside." (R. 201.)

In accordance with his instructions, Coleman ran west from the Southeast Corner of T. 58 N., R. 100 W. on a random line (the S. boundary of T. 58 N., R. 100 W. being also the N. boundary of T. 57 N., R. 100 W.) to the Southwest corner of T. 58 N., R. 100 W., setting temporary corners at each 40 and 80 chains and then, after making proper corrections, returned on the true line measuring the boundaries, setting stone markers thereon at each half mile and at each mile (at each 40 and 80 chains) thereby establishing permanent Corners on the South boundary of T. 58 N., R. 100 W.

Southwest Corner Township 58 North, Range 100 West and South Boundary of Township 58 North, Range 100 West:

"From the Tp. cor. to Tps. 57 and 58 N., Rs. 99 and 100 W., established by me, I run west on a random line bet. said Tps., the variation of my compass being 18° 30′ E. I set temporary half mile and mile corners at each 40 and 80 chs. and find the township line to be 6 miles and 2 chs. long and the falling to be 53 lks. N. of cor. to Tps. 57 and 58 N., Rs. 100 and 101 W., on the 12th Auxiliary Meridian W.

"The correction for the true line will therefore be 8.8 lks. N. per mile and its course will be N. 89° 56′ E." (R. 202.)

Mr. Coleman's field notes and plats show that on June 7, 1892, he measured the South boundary of T. 58 N., R. 100 W., set, marked and permanently established corners thereon at each half mile (R. 201-203) including corners intended for the Southwest Corner and South Quarter corner of Section 36 therein.

Southeast Corner, Section 35, Southwest Corner Section 36, T. 58 N., R. 100 W.—Northeast Corner Section 2 and Northwest Corner Section 1, T. 57 N., R. 100 W.:

Proceeding east on the true South boundary of T. 58 N., R. 100 W., 80 chains from the Southwest corner intended for Section 35 therein, Coleman on June 7, 1892:

"80.00 (chains) Set a sandstone 12x8x5 ins., 8 ins.,

in the ground for cor. to secs. 1, 2, 35 and 36, marked with 1 notch on E. and 5 notches on the W. edges and raised a mound of stone, 1½ ft. high, 2 ft. base, alongside.

Pits impracticable.
Land, mountainous 80 chs.
Soil, 4th rate." (R. 203.)

South Quarter Corner Section 36, T. 58 N., R. 100 W.:

(Continuing east on South boundary of T. 58 N., R. 100 W. from corner next above described.)

June 7, 1892.

"N. 89° 56′ E., on a true line bet. secs. 1 and 36.
Va. 18° 30′ E.

Over rough, mountainous land ascending.

21.00 (chains) Enter scattering scrub pine and cedar timber and descend.

32.00 (chains) Small stream, 4 lks. wide, course N. 60° E. Ascend.

"40.00 (chains) Set a sandstone 14x10x5 ins., 9 ins. in the ground for ¼ sec. cor. marked ¼ on N. face; dug pits 18x18x12 ins., E. and W. of stone, 5½ ft. dist. and raised a mound of earth, 1½ ft. high, 3½ ft. base, alongside." (R. 203.)

Coleman then established the remaining ½ mile of true South boundary returning to the Southeast corner of T. 58 N., R. 100 W., described in his notes as "The cor. to Tps. 57 and 58 N., Rs. 99 and 100 W."

"80.00 (chains) The cor. to Tps. 57 and 58 N., Rs. 99 and 100 W. Land, mountainous, 80 chs. Soil 4th rate. Timber, scrub pine and cedar." (R. 203.)

East Quarter Corner Section 36, T. 58 N., R. 100 W.:

(Continuing North with Coleman from Southeast Corner, T. 58 N., R. 100 W.)

"Survey commenced June 10, 1892.

From an observation on Polaris at eastern elongation at the cor. to Tps. 57 and 58 N., Rs. 99 and 100 W.,

and find the true meridian so determined has at 8 A. M., June 10 a magnetic bearing of 18° 35′ W. which corrected by table, page 55 manual gives mean declination of N. 18° 30′ E.

From the Twp. cor. to Tps. 57 and 58 N., Rs. 99 and 100 W., recently established by me, I run North bet. secs. 31 and 36.

Va. 18° 30′ E.

Over rolling land.

21 (chains) Silver Tip gulch, course N. W.

Ascend over rough mountainous land.

32.35 (chains) Perpendicular cliff 30 ft. high.

40.00 (chains) Set a sandstone 24 x 18 x 2 ins., 18 ins., in the ground for ¼ sec. cor., marked ¼ on W. face and raised a mound of stone 1½ ft. high, 2 ft. base, alongside. Pits impracticable." (R. 208)

Northeast Corner Section 36 and Southeast Corner Section 25, T. 58 N., R. 100 W.—Northwest Corner Section 31 and Southwest Corner Section 30, T. 58 N., R. 99 W.

(Continuing North from East Quarter Corner next above described.)

June 10, 1892.

"66.00 (chains) Top of spur, bears E. and W.

Descend.

80.00 (chains) Set a sandstone 14 x 8 x 6 ins., 9 ins. in the ground for cor. to secs. 25, 30, 31 and 36, marked with 5 notches on N. and 1 notch on S. edges; dug pits 18 x 18 x 12 ins. in each sec. 5½ ft. dist. and raised a mound of earth 2 ft. high, 4½ ft. base, alongside. Land mountainous 59 chs.

rolling 21 chs.

Soil, rocky, 4th rate.

Timber, scrub pine."

"50.00 (chains) Ascend steep slope of mountain.

70.46 (chains) Intersect N. boundary of Wyoming.

16.74 (chains) W. of 109th mile post, which is a pine post 5 ins. sq. by 5 ft. above ground marked Mont. on N., Wyo. on S. 45° N. L. 1880 on E. and 109 M. on W.

faces. Set a sandstone 20 x 8 x 2 ins. 15 ins. in the ground for closing cor. to fractional Tps. 58 N., Rs. 99 and 100 W., marked C. C. T. 58 on S., R. 99 on E. and R. 100 on W. faces with 3 grooves on S. and 6 grooves on E. and W. faces; dug pits 24 x 18 x 12 ins., S., E. and W. of stone, crosswise on each line, 6 ft. dist. and raised a mound of earth, 2½ ft. high, 5 ft. base, alongside.
Land, mountainous 20.46 chs.
rolling 50 chs.
Soil 2d and 4th rate."
(R. 208, 209.)

This point ties into the 109th mile post on the boundary of Wyoming, established by Reeves August 19, 1880 (R. 209).

APPENDIX V.

Organic Act for Wyoming of July 25, 1868, c. 235, 15 Stat. 178, Sec. 14:

> "That sections numbered sixteen and thirty-six in each township in said territory shall be, and the same are hereby reserved for the purpose of being applied to public schools in the state or states hereafter to be erected out of the same."

Enabling Act of Wyoming of July 10, 1890, c. 664, Secs. 4 and 5, 26 Stat. 222:

> "SEC. 4. That sections numbered sixteen and thirty-six in every township of said proposed State, and where such sections, or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said State for the support of common schools, such indemnity lands to be selected within said State in such manner as the legislature may provide, with the approval of the Secretary of the Interior: *Provided,* That section six of the Act of Congress of August ninth, eighteen hundred and eighty-eight, entitled 'An Act to authorize the leasing of the school and university lands in the Territory of Wyoming, and for other purposes,' shall apply to the school and university indemnity lands of the said State of Wyoming so far as applicable.
>
> "SEC. 5. That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under

such regulations as the legislature shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to preemption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

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In The Supreme Court of the United States

No. 10, Original, October Term, 1948

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF WYOMING AND THE OHIO OIL COMPANY,

Defendants

SUPPLEMENTAL REPORT OF NAT. U. BROWN, SPECIAL MASTER

REPUBLIC PUBLISHING COMPANY, YAKIMA, WASH.

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In The Supreme Court of the Unites States

No. 10, Original, October Term, 1948

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATE OF WYOMING AND THE OHIO OIL COMPANY,
Defendants

SUPPLEMENTAL REPORT OF NAT. U. BROWN, SPECIAL MASTER

PLAN OF REPORT

Prior to the submission of this report, as more fully appears in it, it was my thought that the remaining issues in this case could be disposed of without further hearing by the court. Although there has been no complete agreement between the parties either as to the form of the decree or the question of the payment of the Master's fee and costs, upon my suggestion both parties have submitted proposed decrees and their arguments in support thereof which I am setting out in this report so that the court will have before it what is proposed by each of the parties and the reason for such proposals. This is done to obviate, if possible, the necessity for any further hearing or oral argument.

HISTORY OF PROCEEDINGS

The Special Master's original report was filed in this case on October 14, 1946. Plaintiff's exceptions were filed November 29, 1946, and defendants' exceptions were filed on November 22, 1946. Argument was had by the Court on April 7, 1947, and on June 2, 1947, the opinion of the Court was delivered by the Chief Justice where the Master's report on the basic question of title was accepted and confirmed. However, by order of the Court the matter was re-referred to the Master, first, to try the issue of the defendants' good faith through the entire period in dispute, and, second, to hear evidence and make special findings as to the value of the oil produced and the amount and nature of any collateral proceeds from the operation, separately, and as to the amount of each item of income and expense by the month or year.

On February 16, 1948, on motion of the plaintiff the Court entered a decree adjudging the United States to be the owner of Section 36 of Township 58, North of Range 100, West of the Sixth Principal Meridian, located in Park County, Wyoming, and that the defendants had no right, title or interest in the land. That decree reserved jurisdiction of the Court for making such further orders as may be necessary.

PROCEEDINGS SINCE DECREE

Immediately after the decree of the court steps were taken by the Special Master to bring the remaining issues on for hearing and from time to time hearing dates were set but the parties to the action from time to time asked for continuance and delay in order that a settlement might be worked out.

On February 25, 1948, the Ohio Oil Company wrote the following letter to the Attorney General:

"THE OHIO OIL COMPANY

Findlay, Ohio
February 25, 1948

"The Attorney General
Department of Justice
Washington, D. C.

"My Dear Mr. Attorney General:

"The Ohio Oil Company hereby makes the offer hereinafter set forth in detail, in compromise and full settlement of the Government's claim for a money judgment against both of the defendants in the case of United States v. State of Wyoming and The Ohio Oil Company, No. 10, Original, in the Supreme Court.

"1. The Company offers to pay $24,104.42, representing settlement in full for the Government's claim for a money judgment covering the period from the beginning of production on the E½NE¼ of the Section 36 in controversy up to June 1, 1947. For the purpose of this compromise, the date June 1, 1947, is accepted as the date of the entry of the

opinion of the Supreme Court, although that opinion in fact was entered on June 2, 1947.

"2. From June 1, 1947, up to the date that the property is surrendered to the United States, The Ohio Oil Company will account to the United States for the oil extracted during that period on the basis of the gross value of the oil, less the direct operating expenses, including maintenance and repairs, incurred by the Company. It is understood that the operation of the wells on the E½NE¼ of Section 36 is being conducted for The Ohio Oil Company by Stanolind Oil and Gas Company. The direct operating expenses, including maintenance and repairs, to be deducted from the gross value of the oil are not to exceed the charges made by the Stanolind Oil and Gas Company.

"3. If and when the property is surrendered to the United States, the wells and lease equipment installed or used in connection with the operation of said wells, are to be considered as a part of the property to be surrendered.

"This offer is made on the following conditions:

"a. The compromise is not to be used by any of the parties for the purpose of advocating or resisting pending legislation aimed at vesting Wyoming with title to the land in controversy.

"b. In the event this offer is accepted, it shall not be consummated until the expiration of the present Congress. If the pending legislation referred to above becomes law, this offer shall be considered as withdrawn. If, by the expiration of the present Congress, the pending legislation referred to above has not become law, (i) The Ohio Oil Company promptly shall pay to the United States the sum of $24,104.42, (ii) unless delivery of possession has

been made prior to that date, The Ohio Oil Company shall deliver to the agent designated by the United States, the property in controversy, including the wells and lease equipment aforesaid on the E½NE¼ of Section 36, in good operating condition (having due regard for its age and present condition), and (iii) at the same time The Ohio Oil Company shall pay to the United States the amount required to be paid by paragraph number 2 of this offer.

"c. It is understood that The Ohio Oil Company now is in possession, but this compromise shall not prejudice the right of the United States to obtain possession of the land at any time prior to the consummation of this offer.

"Very truly yours,

/s/ A. M. Gee
A. M. GEE
General Counsel
The Ohio Oil Company"

On March 19, 1948, this offer was accepted by the plaintiff.

The Special Master agreed with all parties then to withhold any final report until after the adjournment of the 80th Congress. On July 2, 1948, Public Law 887, chapter 815, 80th Congress, 2d Session, was approved, providing:

"That the Secretary of the Interior be, and he is hereby, authorized and directed to issue a patent to the State of Wyoming for the east half of the northeast quarter, section 36, township 58 north, range 100 west, of the sixth principal meridian, in Park

County, Wyoming, subject to any existing lease or leases: Provided, That title to said land shall be held and considered to have been vested in the State of Wyoming on July 10, 1890."

Inasmuch as it appeared from the proceedings, the evidence and the previous report that The Ohio Oil Company had actual possession of and extracted oil only from the land described in this law and that the demand for a money judgment related only to the operations on this property, no further consideration by the Court of the demand for a money judgment is necessary.

DECREES PROPOSED BY PARTIES

The only remaining issues between the parties, therefore, is the form of the final decree and the question of the payment of costs and compensation and expense of the Special Master. In the hope that this question might likewise be settled between the parties the Special Master called upon each party to submit a proposed decree. That proposed by the plaintiff reads as follows:

"This cause was heretofore submitted on the report of the Special Master and the exceptions of the parties thereto, and the decision of this Court was announced on June 2, 1947 (331 U. S. 440). In accordance with that decision the cause was recommitted to the Special Master for further hearings and report with respect to the demand of the United States for a money judgment on account of the oil

extracted from the land in controversy during the period of the defendants' possession. On February 16, 1948, on motion of the United States, and for the purpose of carrying into effect the conclusions of this Court with respect to the ownership of the land, as stated in its opinion announced June 2, 1947, this Court entered a decree adjudging that the United States is the owner of Section 36 of Township 58, North of Range 100, West of the Sixth Principal Meridian, located in Park County, Wyoming, and that the defendants have no right, title or interest in said land. The decree reserved jurisdiction of the cause for the purpose of making such further orders as may be necessary.

"The Special Master herein has submitted a report pursuant to this Court's decision of June 2, 1947. The report is received and ordered filed.

"Public Law 887, chapter 815, 80th Cong., 2d Sess., approved July 2, 1948, provides:

> 'That the Secretary of the Interior be, and he is hereby, authorized and directed to issue a patent to the State of Wyoming for the east half of the northeast quarter, section 36, township 58 north, range 100 west, of the sixth principal meridian, in Park County, Wyoming, subject to any existing lease or leases: *Provided*, That title to said land shall be held and considered to have been vested in the State of Wyoming on July 10, 1890.'

"From the pleadings, evidence and the report of the Special Master it appears that The Ohio Oil Company had actual possession of, and extracted oil from, only the east half of the northeast quarter of said section 36 and that the demand of the United States for a money judgment relates only to the operations of The Ohio Oil Company on the east half of the northeast quarter of section 36. In

view of the provisions of Public Law 887, approved July 2, 1948, further consideration of the demand of the United States for a money judgment is not necessary.

"It is, therefore, ordered, adjudged and decreed that:

"1. Each of the parties pay its own costs.

"2. The defendants pay the expenses of the Special Master and the amount fixed by the Court as compensation of the Special Master."

That proposed by the defendants, after making the necessary recitations, reads as follows:

"IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

"1. The United States is the owner in fee and entitled to the possession of the W½NE¼, the NW¼ and the S½ of Section 36, Township 58 North, Range 100 West of the Sixth Principal Meridian, in Park County, Wyoming.

"2. The State of Wyoming is the owner in fee and entitled to the possession of the E½NE¼ of Section 36, Township 58 North, Range 100 West of the Sixth Principal Meridian, in Park County, Wyoming, subject to all leases issued by it subsequent to July 10, 1890.

"3. The defendants have no right, title or interest in or to the W½NE¼, the NW¼ or the S½ of said Section 36.

"4. Plaintiff has no right, title or interest in or to the E½NE¼ of said Section 36.

"5. Plaintiff's complaint against defendants for an accounting and for the value of all gas, oil and other petroleum products extracted from said land by the defendants or either of them, with interest thereon, should be and is hereby in all things denied.

"6. The compensation to the Honorable Nat. U. Brown, Master, for services in connection herewith is fixed and established at $..... and his actual expenses, including compensation paid for stenographic and clerical assistance and the cost of printing his report, is $....., making a total of compensation and expenses to him of $....., which said sum shall be paid seven-eighths by plaintiff and one-eighth by defendants."

ARGUMENTS OF PARTIES

In support of the first five paragraphs of the proposed decree by the defendants it is argued by the defendants, at least inferentially, that the interlocutory decree of February 16, 1948, should be set aside and that the Court should find the ownership of the land in accordance with the Act of Congress above quoted. It is the position of the Government, however, that the decree of February 16, 1948, was final, quieted the title to the entire section in the United States and "what Congress does thereafter with the land is of no concern of the Court. If the State of Wyoming is to obtain title to the east half of the northeast quarter, it must do so under the provisions of the Act of July 2, 1948, and not otherwise."

The defendants' argument in support of that decree submitted by them relating to the Master's fee and expenses is succinctly stated in the argument before the Master as follows:

> "As to the matter of the Master's fee and expenses, it is perfectly clear that if such items were to be considered as costs, there could be no recovery thereof by the United States under Rule 32.5 of the Supreme Court Rules. Moreover, if the court had considered that such items were to be paid by the unsuccessful party on the ultimate title, it could have so provided in its order of April 25, 1945, appointing the Master. The suggestion which we made with reference to the division of these items would seem to be perfectly fair in view of the fact that the ultimate result of the suit and the Act is to recognize the United States as the owner of 7/8 of the section before final disposition. The United States instituted the suit in the Supreme Court, undoubtedly knowing that in such a proceeding the services of a Master might reasonably be required. Having initiated such a proceeding with such ultimate result, it should be perfectly willing to agree to the fair and equitable division which we have suggested, bearing in mind that the State's title was not questioned for more than thirty years after its lessee had entered into possession and more than thirty years after the first production had been obtained. If the plaintiff had been anyone other than the United States, it could not have recovered because of such unprecedented laches and stale demands, if for no other reason.
>
> "We, therefore, respectfully submit that the form of Final Decree forwarded to you with our letter of August 13th is in all respects proper."

In answer to this argument the Government insists:

> "With respect to the payment of the expenses and compensation of the Special Master, Mr. Everett states in his letter 'that it would be fair for the parties to bear and pay such allowance in the same proportion as the acreage recovered by them bears to the whole section,' and the defendants' proposed decree provides for payment by the United States of seven-eighths of the amount allowed. This proposal apparently is based on the premise that the defendants recovered one-eighth of section 36 in this litigation. The premise, of course, is without foundation in fact, since title to all of section 36 has been quieted in the United States. We are dealing only with expenses incurred in this action. In the usual case, the prevailing party is not charged with the expenses of the litigation. The United States is the prevailing party in this case on the only issue adjudicated, namely, the title to section 36. The Government again urges that the expenses and compensation of the Special Master be charged to the defendants, as provided in the proposed decree submitted with the Department's letter of August 10, 1948."

FINDINGS

On that portion of the proposed decree that relates to the ownership of the land I am not disposed to follow the suggestion of the defendants in any way. The question of the ownership of the entire section has been determined by this court. The enactment of July 2, 1948, has not in any manner changed that adjudication but simply directs the proper officers of the United States to divest it of title to a portion of the land and to grant it to the state of Wyoming as of July 10, 1890. It

is not necessary in any manner to disturb the interlocutory decree heretofore entered on February 16, 1948.

It is not necessary for the Court to consider whether the approval of the Act of July 2, 1948, actually vests title in the State of Wyoming or not. It is sufficient that all parties do agree that by the approval of that Act the remaining question that is before the Court in this litigation, namely, the demand for a money judgment by the United States against the defendants, has been withdrawn from the consideration of this Court.

As to the portion of the decree relating to the compensation of the Special Master for services and expenses, I am not inclined either to follow the suggestion of the defendants in their proposed decree, nor my former report in this matter which recommended that these costs be divided equally between the parties hereto. That recommendation was based upon the finding that the State of Wyoming was in good faith in its occupation of the land and that The Ohio Oil Company likewise had occupied in good faith. This issue has been withdrawn from the consideration of this Court by the legislative branch of the government and the agreement of the parties. Had it been left to this Court to decide it is impossible to say what that decision would have been as what evidence on this point would have

been produced is unknown to the Special Master or the Court.

As the situation stands, therefore, the plaintiff, so far as the issues of this case submitted to the Court are concerned, has been entirely successful. For that reason, as successful litigant before this Court, it should not be penalized by being subjected to the payment of any portion of the Special Master's fee.

PROPOSED DECREE

It is, therefore, my recommendation that a decree in this matter be entered as follows:

1. This Court having on February 16, 1948, on motion of the plaintiff herein entered a decree adjudging that the plaintiff, the United States, is the owner of section 36, township 58 north, range 100 west, of the sixth principal meridian, located in Park County, Wyoming, and that the defendants have no right, title or interest in said land, and the Court having reserved jurisdiction of the cause for the purpose of making such other orders as may be necessary, and the Special Master having submitted a report pursuant to such decree, and the Court's decision heretofore filed on the 2nd day of June, 1947, and it further appearing that an Act of Congress has been passed being Public Law

887, chapter 815, 80th Congress, 2d Session, approved July 2, 1948, which provides:

> "That the Secretary of the Interior be, and he is hereby, authorized and directed to issue a patent to the State of Wyoming for the east half of the northeast quarter, section 36, township 58 north, range 100 west, of the sixth principal meridian, in Park County, Wyoming, subject to any existing lease or leases: *Provided*, That title to said land shall be held and considered to have been vested in the State of Wyoming on July 10, 1890."

and it further appearing that the defendant The Ohio Oil Company had actual possession of and extracted oil only from that portion of section 36 described in said Act of Congress and that the demand of the plaintiff for a money judgment relates only to the operations of the defendant The Ohio Oil Company on that portion of section 36 described in said Act of Congress, and that by reason thereof no further consideration of the demand of the plaintiff for a money judgment is necessary, it is

ORDERED, ADJUDGED AND DECREED that the decree entered herein on the 16th day of February, 1948, be and it is hereby made final, and it is further

ORDERED, ADJUDGED AND DECREED, that each of the parties hereto pay its own costs, and it is further

ORDERED, ADJUDGED AND DECREED, that the defendants pay the expenses of the Special Master and an amount to be fixed by this Court as compensation for the Special Master.

Respectfully submitted,

NAT. U. BROWN
Special Master.

FILE COPY

FILED
JAN 9 1948

No. 10, Original

In the Supreme Court of the United States

OCTOBER TERM, 1947

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF WYOMING AND THE OHIO OIL COMPANY, DEFENDANTS

MOTION TO ENTER INTERLOCUTORY DECREE; MEMORANDUM IN SUPPORT OF MOTION AND DECREE

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 10, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF WYOMING AND THE OHIO OIL COMPANY, DEFENDANTS

MOTION TO ENTER INTERLOCUTORY DECREE; MEMORANDUM IN SUPPORT OF MOTION AND DECREE

MOTION TO ENTER INTERLOCUTORY DECREE

The United States of America, by its Attorney General and its Solicitor General, moves the Court to enter an interlocutory decree quieting in the United States title to the 640 acres of public land in controversy, in accordance with the terms of the proposed interlocutory decree submitted herewith.

TOM C. CLARK,
Attorney General.
PHILIP B. PERLMAN,
Solicitor General.

JANUARY, 1948.

771665—48

MEMORANDUM IN SUPPORT OF MOTION

1. This is an original action in which the United States sought to establish its title to 640 acres of public land in Wyoming, contained in a section 36, and to recover for the oil extracted by The Ohio Oil Company.

2. On June 2, 1947, the Court rendered its decision, holding that the United States was the owner of the 640 acres in controversy (331 U. S. 440). The Court recommitted the case to the Special Master for further proceedings with respect to the Government's demand for a money judgment on account of the oil extracted from the land during the period of the defendants' possession (331 U. S. 440, 461).

3. On June 26, 1947, the defendants filed a petition for rehearing. On October 13, 1947, the Court denied the petition for rehearing.

4. Since the plaintiff is the owner of the land it is entitled to a formal decree establishing its title of record, without awaiting the final disposition of the issues recommitted to the Special Master. The entry of such a decree would immediately clear the record title and would be a convenience and an aid to the United States in its management of the land under the Mineral Leasing Act. Also, such a decree would permit the Government's lessees and their assignees to

settle their transfers of interests in Government leases covering the property. For example, we have been informed that in 1944 one of the Government's lessees sold its interest in a lease covering 240 acres of the section (W½NE¼, SE¼) for $478,000 on condition that the consideration be paid when the purchaser's attorneys approved the title. The assignment of the interest in the lease was approved by the Secretary of the Interior and the purchaser has gone into possession and is producing in substantial quantities from the deep zone. However, the purchaser's attorneys have refused to approve the title until the Government's title is established of record by formal decree.

Respectfully submitted.

TOM C. CLARK,
Attorney General.

PHILIP B. PERLMAN,
Solicitor General.

JANUARY, 1948.

INTERLOCUTORY DECREE

This cause came on to be heard on the exceptions of the parties to the report of the Special Master and was briefed and argued by counsel. Pursuant to the decision of this Court rendered June 2, 1947 (331 U. S. 440), it is hereby ordered, adjudged and decreed as follows:

1. The United States is now and at all times herein material has been the owner in fee and entitled to the possession of Section 36 of Township 58, North of Range 100, West of the Sixth Principal Meridian, located in Park County, Wyoming.

2. The defendants have no right, title or interest in or to said land or any part thereof.

3. The defendants are hereby perpetually enjoined from asserting any right, title or interest to said land or any part thereof.

4. Jurisdiction of this cause is retained by the Court for the purpose of making such other and further orders and decrees as may be necessary.

U. S. GOVERNMENT PRINTING OFFICE: 1948

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FILED
FEB 3 1948

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 10, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF WYOMING AND THE OHIO OIL COMPANY,

Defendants

RESPONSE AND OPPOSITION TO MOTION TO ENTER INTERLOCUTORY DECREE

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Washington, D. C.;
C. R. ELLERY,
Cheyenne, Wyoming,
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State of Wyoming and The Ohio Oil Company.
NORMAN B. GRAY,
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Attorney General of the State of Wyoming;
A. M. GEE,
HAL W. STEWART,
Findlay, Ohio;
HAROLD H. HEALY,
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Casper, Wyoming,
Attorneys for Defendant,
The Ohio Oil Company.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 10, Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF WYOMING AND THE OHIO OIL COMPANY,

Defendants

RESPONSE AND OPPOSITION TO MOTION TO ENTER INTERLOCUTORY DECREE

In response to the plaintiff's Motion To Enter Interlocutory Decree, defendants oppose same for the following reasons:

1. The proposed action is contrary to this Court's order of April 25, 1945 (325 U. S. 833).

2. The proposed action is contrary to this Court's decision of June 2, 1947 (331 U. S. 440, 461), wherein this case was recommitted to the Special Master for further proceedings with respect to the plaintiff's demand for money judgment on account of oil extracted from the land in question.

3. No useful purpose would be served by entering an interlocutory decree.

4. No sufficient reasons have been assigned that warrant this Court in departing from the procedure already established by it in this case.

MEMORANDUM IN SUPPORT OF DEFENDANTS' RESPONSE AND OPPOSITION

On April 25, 1945 (325 U. S. 833), this Court appointed Nat U. Brown, Esquire, Special Master to hear this case, with instructions to submit to the court his findings of fact and conclusions of law, together with a draft of a decree recommended by him. Said Special Master carried out this Court's directions and has submitted a proposed final decree. This Court, however, recommitted the case to the Special Master (331 U. S. 440, 461) for his further consideration of the Government's demand for a money judgment on account of oil extracted from the land in controversy. A hearing on said accounting issue has been set by the Special Master for March 1, 1948, at Cheyenne, Wyoming, and it can be expected that in due course said master will make additional findings of fact and conclusions of law and again submit same to this Court, together with a final decree recommended by him. This Court can then at one hearing determine all remaining issues in this case and enter one decree which will dispose of the entire case. No necessity appears for departing from such procedure by entering the proposed interlocutory decree.

In the first three paragraphs of plaintiff's Memorandum In Support Of Motion, only formal matters of record have been referred to. Defendants do not believe that these references support the motion but, on the contrary, that they are inconsistent with the entering of an interlocutory decree. Only in the fourth paragraph of plaintiff's memorandum is any attempt made by plaintiff to show reasons for the entry of an interlocutory decree. These reasons are that the entry of such a decree (1) would immediately

clear the record title and would be a convenience and an aid to the United States in its management of the land under the Mineral Leasing Act; and (2) would permit Government lessees and their assignees to settle their transfers of interests in Government leases covering a part of the land here in question.

With respect to the first of such assigned reasons, defendants contend that the entry of an interlocutory decree would not clear the record title. Jurisdiction will remain in the Court over every issue after the entry thereof and until the entry of a final decree which must necessarily dispose of each and every issue involved in the cause. Such interlocutory decree would not be a convenience or an aid to the United States in the management of the land under the Mineral Leasing Act because, for all practical purposes, the management of such land under the Mineral Leasing Act is already determined and provided for in a written contract, entitled the "Elk Basin Unit Agreement," approved by the Acting Secretary of the Interior on May 29, 1946, in accordance with the provisions of the Mineral Leasing Act, as amended, and designated "I-Sec. No. 439" by the Interior Department. Such unit agreement provides for the development and operation of the deeper horizons and deposits in the Elk Basin Field, including those under the land in controversy, those being the only horizons and deposits having any substantial value under such land.

Section 8 of said Agreement contains a provision to the effect that the royalties and net working interest proceeds allocable to such land shall be impounded pending final judicial determination of title. (See Appendix, page 6.) In Section C of the Certificate of Approval of said unit agreement, provision was made regarding the E½NE¼ of said Section (referred to therein as Tract XLIX). (See Appendix, page 7.) This 80-acre tract is the only part of said Section that has not already been leased by the United

States. In said Section C, it was provided that any lease which might be executed by the United States covering this 80-acre tract would be dated as of the effective date of the unit agreement and committed to said unit agreement. Ample provision was also made for the handling of investment costs and operating expenses, including provisions for the settlement of the share of production allocated to such 80-acre tract, retroactive to the effective date of said unit agreement. As the United States, through its lessees, is already in possession of all of said Section 36 with the exception of the E½NE¼, and, as to such 80-acre tract, the parties to such unit agreement, including the United States and its lessees, having made provision for the handling of their interests retroactive to the effective date of the unit agreement, there is no reason for the entry of an interlocutory decree herein. In fact, the unit agreement shows that it was contemplated by the parties, including the United States, that the entire matter would be held in status quo pending *final* determination of all issues with reference thereto.

With respect to the second reason assigned by the plaintiff (that such decree would assist the lessees and their assignees to settle their transfers of interest in the Government leases), defendants show that the entry of an interlocutory decree would not be final or conclusive for the reason that the Court is asked to retain jurisdiction over every issue until final determination is made of all issues. Consequently, there is no reason to assume or expect that the attorneys for the alleged purchasers would approve title on the basis of an interlocutory decree. Further, the said lessees and those who may have purchased from them were not made parties to this action. It its apparent that they bought with full knowledge of the title claims and existence of litigation, and it is improper for the plaintiff to ask this Court to depart from the procedure already

established by it and enter a decree at this time merely to aid purchasers or others who are not now before the Court.

WHEREFORE, the defendants herein respectfully request that no interlocutory decree be entered, and that the entry of any decree concerning title be deferred until the Court is in position to enter a final decree disposing of all issues involved in this case.

Respectfully submitted,

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State of Wyoming and The Ohio Oil Company.
NORMAN B. GRAY,
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W. H. EVERETT,
Casper, Wyoming,
Attorneys for Defendant,
The Ohio Oil Company.

January, 1948

APPENDIX

SECOND AND THIRD PARAGRAPHS OF SECTION 8 OF ELK BASIN UNIT AGREEMENT, PARK COUNTY, WYOMING, APPROVED BY THE ACTING SECRETARY OF THE INTERIOR, MAY 29, 1946, DESIGNATED I-SEC. NO. 439, BY THE DEPARTMENT OF INTERIOR.

"It is understood that there are conflicting title claimants to various tracts included in the Unit Area as indicated on the attached Exhibit "B". By joining in or approving this agreement no conflicting title claimant thereby concedes the validity of a claim adverse to his own, but each conflicting title claimant agrees that said tract shall be subject to all of the terms and provisions hereof, from the effective date of this agreement in the event or to the extent that any such controversy is determined in his or its favor. It is further understood that any provision of this agreement directly or indirectly referring to the Commissioner of Public Lands of the State of Wyoming or to the State of Wyoming as an owner of land shall become operative only in the event it should be finally determined judicially that title to Section 36, T. 58 N., R. 100 W., is in the State of Wyoming.

"Royalties and net working interest proceeds arising from production allocated to a tract, the title to which is in dispute, may, except as to royalties accruing to the United States, be impounded by the Operator without liability for interest pending the final determination or settlement of the title controversy. As to royalties accruing to the United States from tracts, the title to which is in dispute, such funds shall be deposited with the Register of the District Land Office to be held as unearned money pending final settlement of the title dispute and then applied as earned or returned in accordance with such final settlement without interest."

SUBDIVISION C OF APPROVAL—CERTIFICATION—DETERMINATION EXECUTED BY THE ACTING SECRETARY OF THE INTERIOR, MAY 29, 1946, BY WHICH SAID SECRETARY APPROVED AND MADE EFFECTIVE THE ELK BASIN UNIT AGREEMENT, PARK COUNTY, WYOMING, UNDER THE ACT OF CONGRESS, APPROVED FEBRUARY 25, 1920, AS AMENDED. (TRACT XLIX MENTIONED HEREIN IS THE E½NE¼ OF THE SECTION 36 INVOLVED IN THIS ACTION.)

"C. Agree that if the title to Tract numbered XXVI or Tract numbered XLIX, as described in Exhibit "B" attached to said Unit Agreement, or title to both of said tracts, shall be finally adjudicated to be vested in the United States in the contest or litigation relating thereto, the Secretary of the Interior will within ninety (90) days of such final determination or adjudication offer said tracts of land for oil and gas lease by competitive bidding in conformity with the law and regulations upon the express condition that the lessee of said tract or tracts shall fully commit the same, and make said tract or tracts subject in all respects, to the aforesaid Unit Agreement and to the Operating Agreement referred to in Section 12 of said Unit Agreement, and upon the further condition that the lessee shall within ninety (90) days after issuance of lease fully reimburse the Unit Operator for the share of investment costs and operating expenses allocated under said Operating Agreement to said tract or tracts of land, incurred from and after the effective date of unitization, without interest; provided, however, that the Unit Operator shall also make settlement with said lessee and the United States, as their interests shall appear, for the share of the production allocated to said tract or tracts, retroactive to the effective date of the Unit Agreement, and provided further that any lease or leases so issued by the United States shall be dated retroactive to the effective date of the Unit Agreement."

FILE COPY

JUN 26 1947

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 10 Original

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATE OF WYOMING AND THE OHIO OIL COMPANY,
Defendants.

DEFENDANTS' PETITION FOR REHEARING.

DONALD R. RICHBERG,
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NORMAN B. GRAY,
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HAROLD H. HEALY,
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Casper, Wyoming,
Attorneys for Defendant The Ohio Oil Company.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 10 Original

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF WYOMING AND THE OHIO OIL COMPANY,

Defendants.

DEFENDANTS' PETITION FOR REHEARING.

MAY IT PLEASE THE COURT:

The Court has not rendered final judgment herein but has filed an opinion disposing of the issue of *title*, and has recommitted the case to the Master for further proceedings in conformity with its opinion on the question of the right to recover a money judgment on account of defendant Company's oil operation. In the circumstances, the defendants are probably not required to file a petition for rehearing. Tested by the decisions of this Court dealing with judgments of State Courts, the action of the Court, taken on June 2, 1947, did not constitute a final judgment because this does not appear from the "face of the record". *Norfolk & Suburban Turnpike Co.* v. *Virginia*, 225 U. S. 264, 269; *Martinez* v. *International Banking Corporation*, 220 U. S. 214.

But, after consideration, we have decided that while defendants may not rest under the duty to file a petition for rehearing within the time limited within the applicable rule, they are entitled to do so if they wish to complain of the rulings that the Court has already made on the issue of title. Accordingly, the defendants respectfully present this petition for rehearing.*

I.

The Court erred in holding that plaintiff has title to Section 36 herein involved and in overruling defendants' exceptions to the Master's findings and conclusions in respect to the title thereto.

II.

The Court erred in failing to hold that the terms of the Wyoming Enabling Act vested immediately in the State an indefeasible right in whatever lands might be found on later survey to lie within Section 36.

III.

The Court erred in its construction of Section 5 of the Enabling Act and in failing to hold that said Section, when considered in connection with Section 4, created an immediate reservation "for school purposes only", in favor of a named grantee, the State of Wyoming.

IV.

The Court erred in failing to hold that the effect of creating an immediate reservation "for school purposes only" for the benefit of a named grantee, the State of Wyoming,

* Defendants also submit an argument in support of this petition for rehearing. This argument has been bound under the same cover, *post*, pp. 5-13.

was to preclude the Congress from making any other and subsequent disposition of the same lands.

This petition for rehearing is respectfully submitted with the prayer that the opinion of the Court of date June 2, 1947, be set aside and another opinion substituted therefor upholding title of the defendants to the land in controversy, and for general relief.

Respectfully submitted,

DONALD R. RICHBERG,
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C. R. ELLERY,
Cheyenne, Wyo.,
Attorneys for Defendants State of Wyoming and The Ohio Oil Company.

NORMAN B. GRAY,
Cheyenne, Wyo.,
Attorney General of the State of Wyoming.

A. M. GEE,
HAL W. STEWART,
Findlay, Ohio,
HAROLD H. HEALY,
W. H. EVERETT,
Casper, Wyoming,
Attorneys for Defendant The Ohio Oil Company.

I, Donald R. Richberg, Counsel for the defendants in the above entitled cause, certify that the foregoing petition for rehearing is presented in good faith and not for delay.

Dated June ____, 1947.

DONALD R. RICHBERG.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 10 Original

UNITED STATES OF AMERICA,
Plaintiff,

vs.

STATE OF WYOMING AND THE OHIO OIL COMPANY,
Defendants.

DEFENDANTS' ARGUMENT IN SUPPORT OF THEIR PETITION FOR REHEARING.

MAY IT PLEASE THE COURT:

Defendants respectfully submit the following argument in support of their Petition for Rehearing.

The Court erred in applying the holding made in the Heydenfeldt and Morrison cases to the entirely different language of the Wyoming Enabling Act.

It may be assumed that if Section 4 of the Enabling Act stood alone, the claim of the defendants would be defeated by the ruling made in *Heydenfeldt* v. *Daney Gold and Silver Co.*, 93 U. S. 634, reaffirmed in *United States* v. *Morrison*, 240 U. S. 192. But Section 4 does not stand alone. The words of "reservation" contained in Section 5 implement and add to the words of grant contained in Section 4.

The words of reservation contained in Section 5 became immediately effective. The legal effect of the reservation may be debated but not the fact that the reservation was made and became effective as of the date of the enactment of the Enabling Act—whatever may have been its legal effect. That cannot be denied and, as we understand, has not been denied. The plaintiff claims simply that a reservation for one public purpose can be changed later into a reservation for another public purpose. It may be assumed that this is true so long as the reservation is simply a general one for some public purpose, instead of being a specific reservation for the benefit of a named grantee.

We are dealing here with a reservation specifically made for the benefit of a named grantee and when the words of reservation are added to the words of grant (made in Section 4), the right of the named grantee vests at once perforce the reservation. The reservation was made, not only for a named public purpose, but for the benefit of a named grantee, and the effect was to vest immediately an indefeasible right in the named grantee—the State of Wyoming. Such a reservation is to be distinguished from one for some general public purpose without mention of any beneficiary.

If in this case the words of reservation contained in Section 5 did not become immediately effective in respect to the unsurveyed lands, vesting an indefeasible right in the State of Wyoming, named as a beneficiary of the reservation, then they could never become effective as to any of the lands. They constitute, under that view, mere surplusage, adding nothing to the words of grant contained in Section 4. We say this because as to all the lands that were *surveyed* prior to the enactment of the Enabling Act and as to all lands that were subsequently surveyed (before being otherwise disposed of), the title of Wyoming vested as a grantee under Section 4, and this would have been true

even if Section 5 had not been made a part of the Enabling Act. Immediately upon survey, the rule of construction announced in the *Heydenfeldt* and *Morrison* cases would have become applicable in favor of Wyoming under Section 4 of the Act. The provisions of Section 5 prohibiting preemption, homestead entry or any other entry under the land laws of the United States and creating a reservation for school purposes only, for the benefit of the State of Wyoming, applied to the *unsurveyed* Sections 16 and 36 or they applied to nothing. Unless thus construed, they perform no office and serve no purpose.

The Court's construction of Section 5 leaves it without any effective field of operation whatsoever. It could add nothing to the rights of Wyoming once the lands were surveyed because upon survey of any of the lands the title of Wyoming vested as a grantee under Section 4. It would be a misnomer to describe a title already vested under a *grant* as a *"reservation."* To say the least, it would be superfluous for the Congress to say that lands already conveyed to the State, with its title fully attached, were not to be thereafter subject to any entry under the laws of the United States and were to constitute a "reservation" for the benefit of the State.

The clear intent of the Congress in enacting Section 5 was to defeat the "rule of construction" announced in the *Heydenfeldt* case; that is, to protect the *unsurveyed* lands from the effect of the rule announced in that case. The clear purpose of the "words of reservation" was to protect Wyoming in respect to unsurveyed lands pending the making of a survey which would clearly vest its title under Section 4. The words of reservation constituted a security or a guaranty for the grant. The effect of Section 5 was to guarantee that the lands would be on hand undisposed of when they might be surveyed, with the result that they would then pass under Section 4 to the named grantee.

If the words of reservation contained in Section 5 did not have the effect here stated, then they had no effect. They amount to nothing more than an empty declaration of policy, vesting no right—a declaration of policy that could be changed into a conflicting declaration at any later time prior to survey.

We respectfully submit that the holding of the Court to the effect that the words of reservation contained in Section 5 "should be construed as an affirmation of the State's interest as opposed to the claims of such *individuals*" is clearly erroneous. Private entries were specifically interdicted by the first part of Section 5, declaring that "such lands shall not be subject to preemption, homestead entry or any other entry under the land laws of the United States." No additional words were needed to protect these lands from private entries.

In the absence of a specific provision for the reservation "for school purposes only" and for the benefit of Wyoming, it might be plausibly contended that the language of Section 5, prohibiting preemption, homestead entry or other entry under the land laws of the United States, merely created an obligation on the part of the United States not to permit an acquisition of title to the lands by private entries and, further, that such language, standing alone, would not prohibit the United States from disposing of the same lands for its own general public purpose. But Section 5 effected not merely a general public reservation "for school purposes only," but a specific reservation for the benefit of the grantee named—the State of Wyoming. This constituted an immediate "disposition" of the lands for the benefit of Wyoming and the grant and reservation having been immediately accepted, it was no longer competent for the Congress or any one acting under its authority to use the same lands for the purpose of setting up or creating some other and different reservation, displacing and sup-

planting the reservation already made and accepted for the specific benefit of the named grantee. The effect of Section 5 was not merely to create a reservation for a stated purpose but to confer a right on the State of Wyoming that could not be divested by any subsequent act of Congress, or by any one acting under its authority.

It may be admitted that the power of the Congress to commit the lands to one public purpose implies the power under changed considerations of policy to later commit them to another public purpose. But once a reservation is created for the benefit of the specific party, as distinguished from some general public purpose, an indefeasible right is created and there can be no change of policy. At all events, apart from considerations of power, the applicable legislation should not be *construed* as an attempt to effect a change of policy in derogation of rights conferred on the State of Wyoming at the time the reservation was created for its specific benefit. Constitutionality is not the sole test to be applied to this statute; true, faithful and just construction of the statute must also be considered. *United States* v. *Minnesota*, 270 U. S. 181. The question involved is not solely one of *power* but one of *construction*.

In the *Heydenfeldt* case this Court held that, notwithstanding the words of grant contained in the Nevada Enabling Act, "Congress was left free to legislate touching the national domain in any way it saw fit, to promote the public interests." (93 U. S. 640.) This reasoning cannot be correctly applied to the Wyoming Enabling Act because by Section 5 of that Act the Congress *then* enacted legislation "to promote the public interests" in a given way then selected by it. *Present* legislation made a part of the Enabling Act itself was supplied to take the place of any *subsequent* legislation to promote "the public interest." The lands were immediately dedicated to and reserved for "the public interest" mentioned in the Enabling Act; that

is, "for school purposes only" and for the benefit of the named grantee, the State of Wyoming.

To apply the holding in the *Heydenfeldt* case, reaffirmed under a similar statute in the *Morrison* case, amounts to reading out of the Wyoming Enabling Act language that was undoubtedly made a part of that Act for the very purpose of displacing the "rule of construction" applied in the *Heydenfeldt* case. It was competent for the Congress to change the rule of construction applied by this Court in the *Heydenfeldt* case later, and the language of the Wyoming Act makes it plain that this is precisely what Congress intended to do. Instead of permitting the Wyoming grant to be displaced by a *subsequent* disposition to promote "the public interest," as was true of the statute construed in the *Heydenfeldt* case, the Congress selected in the Wyoming case the "public interest" that was to be promoted and created an immediate reservation to promote that particular public interest, and the effect was to vest an indefeasible interest in the named beneficiary—the State of Wyoming.

The Court in its opinion, after referring to the fact that "The powers of the Federal Government with respect to the public lands, as contrasted to the claims of individuals asserted under the land laws, are nowhere mentioned in the section"—referring to Section 5—concludes that "the section should not be construed as a limitation on those powers." We respectfully submit that the case is clearly one where words of inclusion amount to words of exclusion. The setting-up of a reservation for a specific purpose for the benefit of the State of Wyoming excludes the power to make at a later time a reservation of the same lands for the benefit of any one else. To state the name of the beneficiary of the reservation amounts to a statement that all other and unnamed beneficiaries, including the United States or any one else, were excluded.

Congress had the power to reserve Sections 16 and 36 in each township for some specific use, and when this was done, as in Section 5 of the Wyoming Enabling Act, the lands were thereby immediately reserved for school purposes only, and the obligation rested upon the Government to see that the reservation was not diverted for any other purpose. In other words, the specific language, "reserved for school purposes only," is not to be ignored. As early as *Wilcox* v. *Jackson*, 13 Peters 498, this Court had held:

> "* * * that whensoever a tract of land shall have once been legally appropriated to any purpose, from that moment the land thus appropriated becomes severed from the mass of public lands."

In *Leavenworth, etc. R. R. Co.* v. *United States*, 92 U. S. 733, this Court held:

> "Every tract set apart for some special use is reserved to the Government to enable it to enforce that use and there is no difference, in this respect, whether it be appropriated for Indian occupancy or for other purposes, there is an equal obligation resting upon the Government to see that neither class of reservations is diverted from the uses to which it was assigned."

Congress was familiar with the foregoing rule as announced by this Court. Congress knew that by the previous provisions of Section 5, acquisition by individuals of these school lands, surveyed or unsurveyed, had been clearly and expressly barred and prohibited.

It may not be presumed that Congress intended to include in Section 5 a superfluous and meaningless provision. The presumption under the rule frequently announced by this Court is to the contrary, and it should be presumed that Congress, by the use of the phrase "but shall be reserved for school purposes only," intended that said phrase should have purpose, significance, and meaning.

In *Petition of Public National Bank of New York*, 278 U. S. 101, this Court said, in part:

> "* * * In other words, we are asked to ignore the quoted words and read the section as though they were not there.
>
> "But we are not at liberty thus to deny effect to a part of a statute. No rule of statutory construction has been more definitely stated or more often repeated than the cardinal rule that 'significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, Sec. 2, it was said that "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void or insignificant." ' *Washington Market Co.* v. *Hoffman*, 101 U. S. 112, * * *"

In *Washington Market Co.* v. *Hoffman*, 101 U. S. 112, this Court said, in part:

> "* * * We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. * * *"

In *D. Ginsberg & Sons* v. *Popkin*, 285 U. S. 204, this Court said, in part:

> "* * * The construction contended for would violate the cardinal rule that, if possible, effect shall be given to every clause and part of a statute. *Washington Market Co.* v. *Hoffman*, 101 U. S. 112, 115, 25 L. Ed. 782; *Ex parte Public Bank*, 278 U. S. 101, 104, 49 S. Ct. 43, 73 L. Ed. 202."

It was certainly fair and proper for Congress to expressly warn individuals that they could not acquire unsurveyed lands against the State of Wyoming. It was unnecessary for Congress to include an express prohibition against the Government itself after having specifically stated that the Sections 16 and 36 were reserved for school purposes only.

We respectfully submit that this Petition for Rehearing of Defendants' Exceptions to the Special Master's Findings and Conclusions in respect to the title to the Section 36 here involved should be granted, and that upon said rehearing, this Court's decision and opinion of June 2, 1947, be set aside and withdrawn, and that a decree favorable to defendants and one quieting Wyoming's title to said Section 36 be entered.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

No. 10, ORIGINAL.—OCTOBER TERM, 1946.

United States of America, Plaintiff,
v.
State of Wyoming and The Ohio Oil Company. } Original.

[June 2, 1947.]

MR. CHIEF JUSTICE VINSON delivered the opinion of the Court.

The United States filed a complaint in this Court against the State of Wyoming and The Ohio Oil Company to establish plaintiff's title to certain Wyoming lands claimed by the State, and to recover for oil which the Company has taken from the lands under a lease from the State.[1]

By joint answer, the defendants claimed title in the State, and that both defendants have at all times in good faith believed title to be in the State.

The case was referred to a special master, who heard evidence and argument, and submitted to the Court a report, in which he recommended a decree quieting plaintiff's title to the lands in question, but denying plaintiff any recovery for the oil heretofore taken. Both plaintiff and defendants have entered exceptions to the adverse parts of the report, and the case is now before us on such exceptions.[2]

The lands in dispute are those lying within Section 36, Township 58, Park County, Wyoming. It is conceded that plaintiff originally had title to these lands as part of

[1] Jurisdiction of this Court is invoked under Article III, § 2, cl. 2, of the Constitution, and § 233 of the Judicial Code (28 U. S. C. § 341). *United States* v. *Texas*, 143 U. S. 621 (1892).

[2] The master's report was filed October 14, 1946. Plaintiff's exceptions thereto were filed on November 29 and defendants' on December 2, 1946. Argument was heard by the Court on April 7, 1947.

the public lands of the United States. The master held that the Enabling Act of July 10, 1890,[3] on which defendants rely as the source of their rights, properly construed, would operate to vest title in the State only as of the date that an official survey of the lines of the Section was approved by the Commissioner of the General Land Office, and then only if no inconsistent disposition of the lands had been previously made. The master found, however, that no such survey was made and approved until July 27, 1916. Several months earlier, on December 6, 1915, these lands had been placed in a petroleum reserve by Presidential order.[4]

Defendants' exceptions to the master's findings and conclusion relating to title give expression to two basic contentions: first, that the Enabling Act immediately vested in the State an indefeasible right to whatever lands would be found on later survey to lie within Section 36; second, that a so-called Coleman survey of 1892 identified Section 36 sufficiently to create then in the State an indefeasible equity, which ripened into full legal title when the complete survey was made and approved in 1916. These contentions will be further elaborated and discussed in order.

Consistent with the policy first given expression in the Ordinance of 1785, the Federal Government has included grants of designated sections of the public lands for school purposes in the Enabling Act of each of the States admitted into the Union since 1802.[5] This Court has frequently

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[3] 26 Stat. 222.

[4] This order was promulgated under authority of the Act of June 25, 1910, 36 Stat. 847.

[5] The Land Ordinance of 1785 provided: "There shall be reserved the lot No. 16, of every township, for the maintenance of public schools within the said township; . . . ." Between 1802 and 1846 the grants were of the 16th section in each township; thereafter, of sections 16 and 36. In some instances additional sections have been granted. *United States* v. *Morrison*, 240 U. S. 192, 198 (1916).

been called upon to construe the provisions and limitations of such grants. It has consistently been held that under the terms of the grants hitherto considered by this Court, title to unsurveyed sections of the public lands which have been designated as school lands does not pass to the State upon its admission into the Union, but remains in the Federal Government until the land is surveyed. Prior to survey, those sections are a part of the public lands of the United States and may be disposed of by the Government in any manner and for any purpose consistent with applicable federal statutes. If upon survey it is found that the Federal Government has made a previous disposition of the section, the State is then entitled to select lieu lands as indemnity in accordance with provisions incorporated into each of the school-land grants. The interest of the State vests at the date of its admission into the Union only as to those sections which are surveyed at that time and which previously have not been disposed of by the Federal Government.[6]

Defendants contend, however, that regardless of the rule generally applicable in school-grant cases, the provisions of the Wyoming Enabling Act are such that upon her admission into the Union in 1890, an indefeasible proprietary interest in Sections 16 and 36 in each township, whether surveyed or unsurveyed, vested immediately in the State, except as to such sections as had been disposed of previously by the Federal Government for other purposes. This interest, it is contended, is of such a nature, as to preclude any appropriation or reservation of unsurveyed Sections 16 and 36 by the Federal Government after the date of Wyoming's admission into the Union.

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[6] *Wisconsin* v. *Lane*, 245 U. S. 427 (1918); *United States* v. *Stearns Lumber Co.*, 245 U. S. 436 (1918); *United States* v. *Morrison*, *supra*; *Minnesota* v. *Hitchcock*, 185 U. S. 373 (1902); *Heydenfeldt* v. *Daney Gold and Silver Mining Co.*, 93 U. S. 634 (1877). And see *Wyoming* v. *United States*, 255 U. S. 489, 500–501 (1921).

It is defendants' position, therefore, that the order of the President of the United States issued December 6, 1915, which caused the lands here in issue to be included in Petroleum Reserve No. 41, was not sufficient to defeat the State's interest, even if it be assumed that a survey of that section had not been completed at that time. We, accordingly, turn our attention to the provisions of the Wyoming Enabling Act which defendants rely upon to support their contentions.

Section 4 of the Enabling Act provides:

> "That sections numbered sixteen and thirty-six in every township of said proposed State, and where such sections or any parts thereof, have been sold or otherwise disposed of by or under the authority of any act of Congress, other lands equivalent thereto . . . are hereby granted to said State for the support of common schools, . . . Provided, That section six of the act of Congress of August ninth, eighteen hundred and eighty-eight,[1] . . . shall apply to the school and university indemnity lands of the said State of Wyoming so far as applicable."

Defendants first point to the fact that in the granting clause, Congress employed words of present grant. This is said to evince an intention to vest immediately in the State, not only legal title to sections 16 and 36 when surveyed and not otherwise disposed of, but also an indefeas-

[1] Section 6 of the Act of August 9, 1888, 25 Stat. 393, provides: "That where lands in the sixteenth and thirty-sixth sections, in the Territory of Wyoming, are found upon survey to be in the occupancy, and covered by the improvements of an actual pre-emption or homestead settler, or where either of them are fractional in quantity, in whole or in part, or wanting because the townships are fractional or have been or shall hereafter be reserved for public purposes, or found to be mineral in character, other lands may be selected by an agent appointed by the governor of the Territory in lieu thereof, from the surveyed public lands within the Territory not otherwise legally claimed or appropriated at the time of selection, ..."

ible proprietary interest in the unsurveyed sections of the school lands. We believe that this contention is precluded by earlier decisions of this Court. In *Heydenfeldt v. Daney Gold and Silver Mining Co.*, 93 U. S. 634 (1877), decided some thirteen years before the passage of the Wyoming Act, this Court construed the granting clause of the Nevada Enabling Act, which contains language substantially identical to that of § 4 of the Wyoming Act,[8] as not immediately vesting in the State title to sections of the school lands unsurveyed at the date of admission.[9] In *United States v. Morrison*, 240 U. S. 192, 205 (1916), this Court stated: "We regard the decision in the *Heydenfeldt Case* as establishing a definite rule of construction."

It is significant, also, that three years before the passage of the Wyoming Act, the Secretary of the Interior, in con-

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[8] Section 7 of the Nevada Enabling Act, 13 Stat. 30, 32, provides: "That sections numbered sixteen and thirty-six in every township, and where such sections have been sold or otherwise disposed of by any act of congress, other lands equivalent thereto, in legal subdivisions of not less than one quarter-section, and as contiguous as may be, shall be, and are hereby, granted to said state for the support of common schools."

[9] Defendants assert that the *Heydenfeldt* case cannot be regarded as authority here because in reaching its result in the *Heydenfeldt* case, this Court relied in part upon circumstances peculiar to Nevada. The same argument was rejected in the *Morrison* case, *supra* at 205: "It is also urged that the court emphasized the fact that there had been no sale or disposition of the public lands in Nevada prior to the Enabling Act and therefore that the clause could refer only to future disposition; whereas, in the case of Oregon, there had been earlier provisions for the disposal of the public domain. But Congress used the same phrase substantially in nearly every one of the school grants, and it was the manifest intention to place the States on the same footing in this matter. The same clause, relating to the same subject, and enacted in pursuance of the same policy, did not have one meaning in one grant and a different meaning in another; it covered other dispositions, whether prior or subsequent, if made before the land had been appropriately identified by survey and title had passed."

struing the granting clause of the Colorado Enabling Act, which also contains language of present grant, took the position that title to unsurveyed school lands passes to the State only at the date of survey and then only where the Federal Government has made no other disposition of the land prior to that time.[10]

Defendants urge, however, that the pertinent language of the Wyoming Enabling Act should be considered in connection with the legislative history of the Organic Act of 1868,[11] under the authority of which Wyoming was organized into a territory. It is pointed out that § 14 of the Organic Act as originally introduced reserved sections 16 and 36 in each township for school purposes at the time "when the lands in the said territory shall be surveyed under the direction of the government of the United States, preparatory to bringing the same into market. . . ." During the course of the debates on the bill, § 14 was amended to eliminate the phrase quoted above, so that as finally enacted the Organic Act made a present reservation of the lands for school purposes.[12] It is not defendants' contention that § 14 of the Organic Act must necessarily prevail over the provisions of the Enabling Act. It is urged, however, that as a guide to construction, the legislative history of § 14 of the Organic Act clearly indicates an intention on the part of Congress to vest in Wyoming at the date of its admission as a State, immediate interests in all school lands, whether surveyed or unsurveyed, such as to defeat any subsequent attempts by the Federal Government to reserve the sections for other purposes.

We find the argument unconvincing. During the course of the Congressional debates which preceded the amending of § 14 of the Organic Act, concern was expressed by certain members of Congress that delaying

[10] *State of Colorado*, 6 L. D. 412.

[11] 15 Stat. 178.

[12] Cong. Globe, 40th Cong., 2d Sess., 2801–2802.

the reservation for school purposes until the date of survey would leave open the possibility that the most choice school lands would be settled upon by squatters, preemptors, or homesteaders, prior to survey so as to defeat the reservation of those lands for school purposes. It was apparently to deal with that situation that the amendment was passed. We find nothing in the desire of Congress to preserve the reservation of the school lands against the claim of individual settlers, however, as evincing any intention to strip from the Federal Government the power to deal with those lands in the public interest as authorized by the applicable federal statutes. That Congress did not so intend is indicated by the fact that only four years after the passage of the Organic Act, Congress reserved a large tract of the public lands in Wyoming for the Yellowstone National Park.[13] In the Enabling Act, it was specifically provided that Wyoming was not entitled to indemnity for sections 16 and 36 in the townships included within the Yellowstone reservation. Even as to the rights of individual settlers on the school lands, Congress pursued no consistent course. Although the amendment to §14 of the Organic Act apparently was passed to protect the right of the Territory to the school lands against the claim of such individuals, Congress, in the Act of August 9, 1888,[14] gave recognition to the claims of homesteaders and preemptors established prior to survey and granted to the Territory the right to select other portions of the public lands in lieu thereof. We conclude, therefore, that nothing in the legislative history of the acts passed before the Wyoming Enabling Act gives support to the State's claim to title in this case.

Defendant's principal contention, however, is that regardless of the construction which might be required if

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[13] Act of March 1, 1872, 17 Stat. 32.

[14] See note 7, *supra*.

the granting clause of the Enabling Act stood alone, that clause read in connection with § 5 of the Act, gives clear support to their position. Section 5 provides as follows:

> "That all lands herein granted for educational purposes shall be disposed of only at public sale, . . .; and such land shall not be subject to pre-emption, homestead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

Defendants vigorously assert that the phrase "but shall be reserved for school purposes only" completely and irrevocably divested the Federal Government of power to dispose of or to deal with any sections 16 and 36 of the public lands in the State not sold or otherwise disposed of prior to the passage of the Enabling Act. This phrase read in connection with the language of present grant in § 4, it is asserted, reveals a clear intention to vest immediately in the State an indefeasible interest in all such lands. We do not believe that the language should be so construed.

The phrase "but shall be reserved for school purposes only" should not be considered apart from the language which immediately precedes it. The clause beginning with the semicolon in the last sentence in the section clearly and explicitly treats the claims of individuals to school lands asserted under the federal land laws and provides that those claims should not prevail against the State. The phrase upon which Wyoming relies should be construed as an affirmation of the State's interest as opposed to the claims of such individuals. The phrase, however, should not be construed as a limitation on the Federal Government's powers to deal with such lands in a manner consistent with the applicable federal statutes. The powers of the Federal Government with respect to the public lands, as contrasted to the claims of individuals

asserted under the land laws, are nowhere mentioned in the section. We think that in the absence of such language, the section should not be construed as a limitation on those powers."[15]

Convincing support for this construction is found both in the legislative history of the language contained in § 5 of the Wyoming Act and in subsequent Congressional enactments. Language identical to the last clause of § 5 first appeared as part of § 11 of the Act of February 22, 1889,[16] the Enabling Act for the States of Washington, Montana, North Dakota, and South Dakota. A bill authorizing the admission of South Dakota, and containing language similar to that later included in § 5 of the Wyoming Act, was first passed by the Senate.[17] When the bill came before the House for consideration, an amendment was approved which struck out all the provisions of the Senate bill following the enacting clause and substituted a bill calling for the admission of Washington, Montana, North Dakota, and South Dakota.[18] As finally passed by the House, the substitute bill provided that rights of settlers to the school lands should be preserved where settlements were made prior to survey or before approval of the Act of admission.[19] The conference committee, however, rejected those provisions; and the Act as passed included language similar to that in the original Senate bill and identical to that later incorporated into

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[15] Cf. *United States* v. *United Mine Workers of America*, — U. S. — (1947); *Guarantee Title & Trust Co.* v. *Title Guaranty & Surety Co.*, 224 U. S. 152, 155 (1912).

[16] 25 Stat. 676.

[17] 19 Cong. Rec. 2802; Sen. Journ. 50th Cong., 1st Sess., p. 696. Section 6 of that bill contained the following language: ". . . ; and such sections shall not be subject to pre-emption or entry, whether surveyed or unsurveyed, but shall be reserved for school purposes only."

[18] 20 Cong. Rec. 806–812.

[19] *Id.* at 948, 951.

the Wyoming Act, providing that the claims of the States to the school sections should prevail over those of the individual settlers." It will be observed that the conflict between the provisions in the House bill and the Senate bill related to the competing interests of the States and the individual settlers. Nothing in this history indicates that by accepting the alternative provided in the Senate bill and resolving the conflict in favor of the States, Congress intended, also, to extinguish the powers of the Federal Government, theretofore exercised, with respect to the unsurveyed sections of the school lands. Nor is there any evidence that Congress intended such a departure from previous practice when it incorporated an identical clause into § 5 of the Wyoming Act. Indeed, the House Committee Report states that the Enabling Act gives to Wyoming "the usual land grants," [28] and the manager of the bill in the House of Representatives during the course of the debates made a similar statement.[29]

Additional support for the construction which we have indicated as proper may be found in subsequent Congressional enactments. Thus in the Act of February 28, 1891, which became law only seven months after the passage of the Wyoming Enabling Act, Congress clearly revealed its understanding that the Federal Government had retained its powers to reserve and dispose of the unsurveyed school lands. That Act, the pertinent language of which is set out in the margin,[30] attempts, among other

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[28] *Id.* at 2104, 2116.

[29] H. R. Rep. No. 20, 51st Cong., 1st Sess., 26.

[30] 21 Cong. Rec. 2707.

[31] 26 Stat. 796. "Where settlements with a view to pre-emption or homestead have been, or shall hereafter be made, before the survey of the lands in the field, which are found to have been made on sections sixteen or thirty-six, those sections shall be subject to the claims of such settlers; and if such sections, or either of them, have been or shall be granted, reserved, or pledged for the use of schools or colleges in the State or Territory in which they lie, other lands of equal acreage

things, to establish a uniform policy with respect to the granting of lieu lands to the States where upon survey it is found that the designated sections are subject to homestead and pre-emption claims or where the Federal Government has included such sections within a reservation or has disposed of them in some other way. It should be observed that when dealing with the right of the States to select lieu lands where homestead and pre-emption claims are involved, Congress first inserted language in the Act designed to create in individuals holding such claims rights superior to those of the States to the school sections upon which settlement before survey has been made. But in dealing with the selection of lieu lands where the Federal Government prior to survey has included the designated school sections in a reservation or has otherwise disposed of them, Congress did not find it necessary first to create the power in the Federal Government to make such reservations or dispositions. Rather, on the apparent assumption that such powers had been retained by the Federal Government and were presently existing, Congress merely provided for the selection of lieu lands by the States where upon survey it is found that those powers have been exercised. It is apparent that Congress intended that the Act of 1891 should apply to Wyoming as well as to the other school-land States.[24] Indeed, Wyoming on at least two previous occasions so contended and succeeded in obtaining benefits under the Act.[25] We need not now consider the effect

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are hereby appropriated and granted, and may be selected by said State or Territory, in lieu of such as may be thus taken by pre-emption or homestead settlers. And other lands of equal acreage are also hereby appropriated and granted, and may be selected by said State or Territory where sections sixteen or thirty-six are mineral land, or are included within any Indian, military, or other reservation, or are otherwise disposed of by the United States: . . . ."

[24] H. R. Rep. No. 2384, 51st Cong., 1st Sess.

[25] *Wyoming* v. *United States*, 255 U. S. 489 (1921); *State of Wyoming*, 27 L. D. 35.

of the Act of 1891 insofar as it may be inconsistent with the provisions of the Wyoming Enabling Act, for it is our view that with respect to the problem of this case no inconsistency exists. It is not without significance, also, that in 1934, Congress, after having been fully apprised of the administrative construction of the school-land provisions of the Wyoming Enabling Act,[36] which is in accord with the construction which we have made, amended § 5 of that Act but reenacted all the provisions of that section which are pertinent to the present case.[37]

Defendants' view that, by virtue of the language of the Enabling Act, Congress extinguished the power of the Federal Government subsequently to dispose of the unsurveyed school sections in the exercise of its governmental functions, admittedly would place Wyoming in a favored position among the school-grant States. Such a result does not accord with the Congressional expectation that the school grant should have "equal operation and equal benefit in all the public land States or Terriories."[38] Defendants suggest no special circumstances or peculiar considerations of policy which convincingly indicate a purpose on the part of Congress to place Wyoming on other than an equal footing with other States with respect to the powers of the Federal Government in the unsurveyed school sections.

Furthermore, one of the important recurring problems faced by Congress during the period in which the Wyoming Enabling Act was passed was the necessity of reserving

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[36] H. R. Rep. 229, 73d Cong., 1st Sess.; Sen. Rep. No. 10, 73d Cong., 1st Sess.

[37] 48 Stat. 350. Section 5 of the Enabling Act was amended so as to permit the State to lease the school lands for periods of ten years as contrasted to a five year limitation contained in the section as originally enacted.

[38] H. R. Rep. No. 2384, 51st Cong., 1st Sess., 1. Sen. Rep. No. 502, 51st Cong., 1st Sess., 1.

tracts of the public lands to accomplish such important purposes as preserving the national forests and mineral resources, establishing public parks, and the like.[29] Vesting in the State an immediate and irrevocable interest in the school sections before such sections had been identified by survey would be to complicate the performance of the Government's obligation with respect to the public lands. That Congress intended such complication seems most unlikely when it is observed that the policy underlying the grant of lands to the State for school purposes could be achieved without producing that result. Thus § 4 of the Enabling Act makes provision for indemnification to the State where the designated school sections are disposed of for other purposes by authorizing the selection of lands by the State in lieu thereof. Section 6 of the Act of August 9, 1888,[30] which was incorporated into § 4 of the Enabling Act "so far as applicable," specifically provides for the selection of lieu lands where the school sections "have been or shall hereafter be reserved for public purposes."

It is significant that for a period extending over half a century, the land decisions of the Department of the Interior have consistently taken the position that title to unsurveyed school sections passes to the State only upon completion of the survey, and prior to that time the Federal Government is not inhibited from making such reservations and dispositions of the lands as required by the public interest and as authorized by applicable statutes. Many of those decisions involved statutory language substantially identical to that in the Wyoming Enabling Act.[31]

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[29] Thus the same volume of the Statutes at Large containing the Wyoming Enabling Act also contains at least two pieces of such legislation. 26 Stat. 478, 650.

[30] See note 7, *supra*.

[31] *South Dakota* v. *Riley*, 34 L. D. 657; *State of Montana*, 38 L. D. 247; *State of Utah*, 53 L. D. 365. And see *F. A. Hyde & Co.*, 37

We should be slow at this late date to upset the rulings "... of the department of the Government to which is committed the administration of public lands." [24]

For the reasons stated above, we hold that at the date of her admission to the Union, Wyoming acquired no such interest in the lands in issue that could not be defeated by the inclusion of those lands in a petroleum reserve by the Federal Government acting prior to survey.

We also think that defendants' reliance on the Coleman survey of 1892 as the basis of an indefeasible equitable right to Section 36 is misplaced, and may be answered briefly.

That survey was undertaken pursuant to a request from the State to the United States Surveyor General that Township 58 be surveyed and subdivided, in order to permit the State to make selections of school lands, and the contract and instructions for the survey so directed. The survey which was then made, however, actually fixed only the boundaries of Township 58, and marked one-mile intervals on those boundaries, but did not subdivide the township. Section 36 lies in the township's south-east corner, and its southern and eastern boundaries are concurrent with part of the southern and eastern township boundaries, but the northern and western section boundaries remained undetermined. This was not a completed survey of Section 36.[25]

Defendants no longer contend that it was. They argue only that it "identified" Section 36, or made it "susceptible of identification by protraction," sufficiently that the State should in equity be held to have acquired vested rights in

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L. D. 164; *State of New Mexico*, 52 L. D. 679. Also in accord are decisions in *Utah* v. *Work*, 6 F. 2d 675 (1925); *Thompson* v. *Savidge*, 110 Wash. 486, 188 P. 397 (1920).

[24] *California* v. *Deseret Water, Oil, & Irrigation Co.*, 243 U. S. 415, 421 (1917).

[25] R. S. 2395, 43 U. S. C. § 751. *Barnhurst* v. *State of Utah*, 30 L. D. 314; *Harris* v. *State of Minnesota*, Copp. L. L. (1875-82) 631.

the Section as of the date this survey was approved. They claim support for this position in several decisions recognizing that the title of certain western railroads granted lands by the United States vested when the line of route was selected and a plan thereof filed, whether or not the adjacent lands had then been surveyed.[34]

We find no merit in this argument. The railroad land grant cases are not apropos. Not only do they deal with statutes different from the one before us in the present case, but also they have nothing to do with the identification of unsurveyed lands by the protraction of partial surveys. In the *Morrison* case [35] this Court held a completed but unapproved survey inadequate to vest any rights to school lands. *A fortiori*, defendants are not benefited by the Coleman survey.

For the foregoing reasons, defendants' exceptions to the master's findings and conclusions in respect to title are overruled.

Having decided that plaintiff has title to Section 36, we now turn to the question of its right to recover a money judgment because of the defendant Company's oil operations thereon.

It was shown that in 1917, under a lease from the State, the Company entered Section 36 and drilled five wells, some of which are still in production. For the period from the Company's entry on the land until December 31, 1944,[36] there was evidence of the amount and market value of oil produced and of the capital and operating expenses of this production, each by the month, and of

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[34] Cf. *Santa Fe Pac. R. Co.* v. *Lane*, 244 U. S. 492 (1917); *St. Paul & Pac. R. Co.* v. *Northern Pac. R. Co.*, 139 U. S. 1 (1891); *Grinnell* v. *Chicago, Rock Island & Pac. R. Co.*, 103 U. S. 739 (1880).

[35] *United States* v. *Morrison*, *supra*, note 5.

[36] Accounts for the period January 1, 1945, to date of hearing were to be prepared and submitted later, along with those for any subsequent periods for which defendants might be liable.

the collateral "steam earnings," the royalties and taxes paid to the State, and the overhead expenses allocable to this production, each by the year."[37] For the purpose of proving the bad faith of the trespass, plaintiff offered evidence tending to show that defendants knew of plaintiff's claim to the land and realized its superiority over their own claim at least as early as 1929.

This last evidence the master refused to admit. He thought that, in order to recover for a "bad faith" trespass, plaintiff was required to put the question in issue by alleging "bad faith" in the complaint, which it had not done. He also thought that plaintiff's allegation of defendants' claim of right in Section 36 was, in effect, an admission of defendants' good faith. Without having tried the bad faith issue, the master stated that both defendants sincerely believed in their asserted rights, and made a finding of the State's good faith. From this he concluded that plaintiff's recovery should be measured by the gross proceeds realized on the operation, less the proper expenses incurred.

From the other evidence heretofore mentioned, the master found that the total amount of the Company's gross proceeds, including both the value of oil produced and steam earnings, was $168,317.53, and that its total expenses were $232,797.27, including royalties paid in the amount of $17,306.30.[38] He held that all proven elements of the Company's expenses except royalties were properly

[37] The total of each of these items for the entire period was as follows: value of oil produced, $167,049.54; steam earnings, $1,267.99; capital expenses, $118,628.84; operating expenses, $70,083.73; overhead expenses, $22,461.00; taxes, $4,317.40; royalties, $17,306.30. It does not appear what the nature of the so-called "steam earnings" was.

[38] The totals found by the master are the sums of the appropriate individual items which were in evidence, and which were recited in footnote 37. No question was raised as to the accuracy of any of these figures.

deductible. As expenses so allowed had been about $47,000.00 greater than gross proceeds, the master concluded that plaintiff should recover nothing.

Plaintiff excepts to these findings and conclusions in several respects. First, it maintains that the pleadings properly framed the issue of bad faith, and contends that the master therefore erred in excluding evidence relating to this issue, and in finding that either or both of the defendants had acted innocently.

An agreed premise is found in the rule that one who "wilfully" or "in bad faith" trespasses on the land of another, and removes minerals, is liable to the owner for their full value computed as of the time the trespasser converted them to his own use, by sale or otherwise, but that an "innocent" trespasser, who has acted "in good faith," may deduct from such value the expenses of extraction.[39] It is also clear that when suit is brought for the value of minerals wrongfully removed from the plaintiff's land, and the trespass and conversion are established, the burden of pleading and proving good faith is on the defendant.[40] The "good faith" contemplated by these rules is something more than the trespasser's assertion of a colorable claim to the converted minerals.[41]

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[39] See *Martel* v. *Hall Oil Co.*, 36 Wyo. 166, 178, 253 P. 882, 864 (1927); *United States* v. *St. Anthony R. Co.*, 192 U. S. 524 (1904); *Pine River Logging Co.* v. *United States*, 186 U. S. 279 (1902); *Woodenware Co.* v. *United States*, 106 U. S. 432 (1882); *United States* v. *Homestake Mining Co.*, 117 F. 481 (CCA 8th 1902); *Winchester* v. *Craig*, 33 Mich. 205 (1877); *Livingstone* v. *Rawyards Coal Co.*, 5 L. R. App. Cas. 25 (H. L. 1880); *Summers, Oil and Gas*, §§ 23, 24.

[40] *Liberty Bell Gold Mining Co.* v. *Smuggler-Union M. Co.*, 203 F. 795, 802 (CCA 8th 1913); *Elkhorn-Hazard Coal Co.* v. *Kentucky River Coal Corp.*, 20 F. 2d 67, 71 (CCA 6th 1927).

[41] *Guffey* v. *Smith*, 237 U. S. 101 (1915); *Benson Mining Co.* v. *Alta Mining Co.*, 145 U. S. 428 (1892). Cf. *Hall Oil Co.* v. *Barquin*, 33 Wyo. 92, 137, 237 P. 255, 270 (1925).

Thus, in this case, plaintiff's allegation that defendants claimed rights in Section 36, made as a basis for a prayer to have title quieted in plaintiff, cannot be deemed equivalent to an admission of defendants' good faith. Plaintiff also alleged its own title, the lack of any right or title in defendants, that the Company was there engaged in the production of oil, and that the value of the oil theretofore extracted was in excess of $165,000. It then prayed for a recovery of "the full value of all gas, oil, and other petroleum products extracted from said land by the defendants or either of them." In the answer, besides claiming title and oil rights, defendants averred their good faith belief that they had such rights, which plaintiff traversed in a reply. We have no doubt that these pleadings put the question of defendants' good faith in issue. Obviously, the master's statement in his report that the defendants believed in their asserted rights is unwarranted on the present record. We conclude, therefore, that the master erred in excluding any competent evidence material to the good faith issue, and in finding that either or both defendants acted in good faith.

Second, plaintiff excepts to the master's failure, even on the present record, to make findings of defendants' bad faith and to recommend a decree awarding damages accordingly.[42] It urges, as one ground for this exception, that defendants, having the burden of proof on that issue, failed to introduce sufficient evidence to make a *prima facie* showing of good faith.

For reasons already suggested, we need not consider whether defendants carried that burden. The view that the good faith issue was foreclosed in defendants' favor was expressed by the master before any evidence had been

[42] The measure of damages claimed by plaintiff's exceptions on the theory about to be stated are, as against the Company, the full proceeds of the oil plus "steam earnings," and as against the State, the amount of royalties received.

introduced, and consistently throughout the hearing. Even if defendants had doubted the correctness of this view, they were not bound to repudiate it and make an offer of proof of good faith in order to have a trial of the issue if the master should prove to be wrong.

As another ground, plaintiff urges that defendants have at all times since the beginning of this trespass had constructive knowledge of plaintiff's title, and that either they have "intentionally or negligently failed to ascertain from the readily available public records who owned the land," or they have acted "with full knowledge that the section belonged to the United States."

It is clear, however, that constructive knowledge of the owner's title does not demonstrate defendants' bad faith as a matter of law.[48] As to whether an intentional or negligent failure to ascertain the true incidence of title alone constitutes bad faith, we need not now decide, as no such fact has been established.

Plaintiff's alternative contention that we should now enter a finding of defendants' bad faith for the post-1929 period at least, because as to it "there is positive proof that the Company knew . . . the United States owned the land," may be answered in the same way. Plaintiff proffered evidence of such knowledge, but we cannot say that this evidence amounted to conclusive proof. We think the necessity of trying the issue of defendants' good faith throughout the entire period in dispute, preliminary to determining the measure of plaintiff's recovery, cannot be avoided.

Third, plaintiff urges and we agree that the master should make special findings—insofar as the parties request, and offer competent evidence to support them—as to the value of the oil produced and the amount and nature of any collateral proceeds from the operation, separately,

[48] *Guffey* v. *Smith*, *supra*, 237 U. S. at 118.

and as to the amount of each item of income and expense by the month or year. Such action should enable the Court to dispose of the case on the next hearing, regardless of any revisions it might make in the master's findings, conclusions, or recommended decree.

In its exceptions to the master's report and its argument here, plaintiff has raised several other questions, the materiality of each of which depends on whether the trespass was committed in good faith. Obviously, such questions must remain moot until this issue is decided.

The case is recommitted to the master for further proceedings in conformity with this opinion.

So ordered.